

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WALTER TUVELL,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES, INC.,

Defendant

Civil Action No. 13-11292-DJC

AFFIDAVIT OF JOAN ACKERSTEIN

I, Joan Ackerstein, on oath, depose and say as follows:

1. I am a Shareholder in the law firm of Jackson Lewis P.C., with an office located at 75 Park Plaza, Boston, Massachusetts 02116. I am one of the attorneys representing Defendant International Business Machines, Inc. in the matter.

2. Attached as Exhibit 1 is a copy of excerpts from the first day of the deposition of Plaintiff Walter Tuvell, taken on May 16, 2014.

3. Attached as Exhibit 2 is a copy of excerpts from the second day of the deposition of Plaintiff Walter Tuvell, taken on June 24, 2014.

4. Attached as Exhibit 3 is a copy of excerpts from the deposition of Christopher Kime taken on March 7, 2014.

5. Attached as Exhibit 4 is a copy of excerpts from the deposition of B. Stewart Snyder, III, M.D., taken on March 19, 2014.

6. Attached as Exhibit 5 is a copy of excerpts from the deposition of Kathleen Ann Dean taken on March 27, 2014.

7. Attached as Exhibit 6 is a copy of excerpts from the deposition of Daniel Feldman taken on March 28, 2014.

8. Attached as Exhibit 7 is a copy of excerpts from the deposition of Stephanie Ross, L.I.C.S.W., taken on April 11, 2014.

9. Attached as Exhibit 8 is a copy of excerpts from the deposition of Linda King taken on May 9, 2014.

10. Attached as Exhibit 9 is a copy of excerpts from the deposition of Lisa Due taken on May 20, 2014.

11. Attached as Exhibit 10 is a copy of excerpts from the deposition of Russell Mandel taken on June 4, 2014.

12. Attached as Exhibit 11 is a true and accurate copy of what was marked as Exhibit 9 to Plaintiff's Deposition and identified as a warning dated August 3, 2011.

13. Attached as Exhibit 12 is a true and accurate copy of what was marked as Exhibit 3 to the deposition of Christopher Kime and identified as an e-mail dated December 1, 2011 from Walter Tuvell to Chris Kime regarding SWG-0436579 discussion.

14. Attached as Exhibit 13 is a true and accurate copy of what was marked as Exhibit 11 to the deposition of Christopher Kime and identified as an e-mail dated January 6, 2012 from Chris Kime to Walter Tuvell regarding Happy New Year.

15. Attached as Exhibit 14 is a true and accurate copy of what was marked as Exhibit 6 to the deposition of Dr. B. Stewart Snyder and identified as an e-mail string dated October 4, 2011 regarding Tuvell.

16. Attached as Exhibit 15 is a true and accurate copy of what was marked as Exhibit 3 to the deposition of Kathleen Dean and identified as an e-mail dated August 11, 2011 from Kathleen Dean to Walter Tuvell regarding Need health service.

17. Attached as Exhibit 16 is a true and accurate copy of what was marked as Exhibit 7 to the deposition of Kathleen Dean and identified as an e-mail string dated September 13, 2011

from Stewart Snyder to Kathleen Dean and others regarding IBM Confidential: Walter Tuvell #0G3821.

18. Attached as Exhibit 17 is a true and accurate copy of what was marked as Exhibit 9 to the deposition of Kathleen Dean and identified as an e-mail string dated September 16, 2011 from Stewart Snyder to Kathleen Dean regarding IBM Confidential: Walter Tuvell #0G3821.

19. Attached as Exhibit 18 is a true and accurate copy of what was marked as Exhibit 9 to the deposition of Daniel Feldman and identified as an e-mail string dated June 10, 2011 from Fritz Knabe to Daniel Feldman regarding FYI.

20. Attached as Exhibit 19 is a true and accurate copy of what was marked as Exhibit 13 to the deposition of Daniel Feldman and identified as an e-mail string dated June 15, 2011 from Walter Tuvell to Daniel Feldman regarding FW: Transition of responsibilities.

21. Attached as Exhibit 20 is a true and accurate copy of what was marked as Exhibit 14 to the deposition of Daniel Feldman and identified as an e-mail string dated June 15, 2011 from Walter to Daniel Feldman regarding Transition status – 6/14/2011.

22. Attached as Exhibit 21 is a true and accurate copy of what was marked as Exhibit 15 to the deposition of Daniel Feldman and identified as an e-mail dated June 17, 2011 from Sujatha Mizar to Dan Feldman regarding Transition status – 6/16/2011 and 6/17/2011.

23. Attached as Exhibit 22 is a true and accurate copy of what was marked as Exhibit 25 to the deposition of Daniel Feldman and identified as an e-mail string dated July 26, 2011 from Daniel Feldman regarding Walter Tuvell.

24. Attached as Exhibit 23 is a true and accurate copy of what was marked as Exhibit 31 to the deposition of Daniel Feldman and identified as an e-mail dated November 23, 2011 from Daniel Feldman to Walter Tuvell regarding Return to work.

25. Attached as Exhibit 24 is a true and accurate copy of what was marked as Exhibit 37 to the deposition of Daniel Feldman and identified as an e-mail dated December 16, 2011 from Daniel Feldman to Walter Tuvell regarding FW: Your two requests.

26. Attached as Exhibit 25 is a true and accurate copy of what was marked as Exhibit 44 to the deposition of Daniel Feldman and identified as and e-mail dated May 17, 2012 from Daniel Feldman to Walt Tuvell regarding Next Steps.

27. Attached as Exhibit 26 is a true and accurate copy of what was marked as Exhibit 4 to the deposition of Stephanie Ross and identified as a Medical Treatment Report Form signed by Stephanie Ross dated October 12, 2011.

28. Attached as Exhibit 27 is a true and accurate copy of what was marked as Exhibit 5 to the deposition of Stephanie Ross and identified as a Medical Treatment Report Form signed by Stephanie Ross dated November 3, 2011.

29. Attached as Exhibit 28 is a true and accurate copy of what was marked as Exhibit 6 to the deposition of Stephanie Ross and identified as a Medical Treatment Report Form signed by Stephanie Ross dated December 19, 2011.

30. Attached as Exhibit 29 is a true and accurate copy of what was marked as Exhibit 28 to the deposition of Stephanie Ross and identified as an e-mail dated September 28, 2012 from Stephanie Ross to Walt Tuvell regarding Letter to Met Life.

31. Attached as Exhibit 30 is a true and accurate copy of what was marked as Exhibit 9 to the deposition of Linda King and identified as an e-mail string dated June 14, 2011 from Walter Tuvell to Daniel Feldman regarding Summer plans.

32. Attached as Exhibit 31 is a true and accurate copy of what was marked as Exhibit 10 to the deposition of Linda King and identified as an e-mail dated April 21, 1997 from Walt

Tuvell to Meg MacGougan, Margaret Johnson and David Thompson regarding Sleepless in Boston.

33. Attached as Exhibit 32 is a true and accurate copy of what was marked as Exhibit 19 to the deposition of Linda King and identified as an e-mail dated June 3, 2013 from Walter Tuvell to Patricia Barnes regarding Where I got PTSD.

34. Attached as Exhibit 33 is a true and accurate copy of what was marked as Exhibit 1 to the deposition of Lisa Due and identified as an e-mail string dated June 16, 2011 from Diane Adams to Lisa Due regarding Fw: Transition and status reporting.

35. Attached as Exhibit 34 is a true and accurate copy of what was marked as Exhibit 3 to the deposition of Lisa Due and identified as an e-mail chain dated June 23, 2011 from Walter Tuvell to Lisa Due regarding Walter Tuvell.

36. Attached as Exhibit 35 is a true and accurate copy of what was marked as Exhibit 12 to the deposition of Lisa Due and identified as an e-mail dated June 29, 2011 from Lisa Due to Walter Tuvell regarding *Confidential: Investigation.

37. Attached as Exhibit 36 is a copy of excerpts from the deposition of Frederick C. Knabe taken on June 13, 2014.

38. Attached as Exhibit 37 is a copy of excerpts from the deposition of Victoria Vazquez taken on April 14, 2014.

39. Attached as Exhibit 38 is a true and accurate copy of what was marked as Exhibit 2 to the deposition of Victoria Vazquez and identified as an August 15, 2011 Medical Treatment Form.

40. Attached as Exhibit 39 is a true and accurate copy of what was marked as Exhibit 3 to the deposition of Victoria Vazquez and identified as a September 9, 2011 Medical Treatment Form.

41. Attached as Exhibit 40 is a true and accurate copy of Plaintiff's Automatic Disclosures served on August 9, 2013.

42. Attached as Exhibit 41 is a true and accurate copy of the First Amended Complaint, which was marked as Exhibit 7 to Plaintiff's deposition.

Signed under the pains and penalties of perjury this 15th day of December 2014.

/s/ Joan Ackerstein

Joan Ackerstein

CERTIFICATE OF SERVICE

This is to certify that on December 15, 2014, a copy of the foregoing document was served upon all parties of record via the ECF system.

/s/ Matthew A. Porter

Jackson Lewis P.C.

Volume I
Pages 1 to 271
Exhibits 1 to 20

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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WALTER TUVELL,           :
      Plaintiff,         :
      vs.                 :   C.A. No.
                        :   13-CV-11292-DJC
INTERNATIONAL BUSINESS   :
MACHINES, INC.,         :
      Defendant.        :
-----x

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DEPOSITION OF WALTER E. TUVELL, JR., a witness called on behalf of the Defendant, taken pursuant to the Federal Rules of Civil Procedure, before Ken A. DiFraia, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Jackson Lewis P.C., 75 Park Plaza, Boston, Massachusetts, on Friday, May 16, 2014, commencing at 10:14 a.m.

PRESENT:

Rodgers, Powers & Schwartz LLP
(by Robert S. Mantell, Esq.)
18 Tremont Street, Suite 500,
Boston, MA 02108,
RMantell@TheEmploymentLawyers.com
617.742.7010
for the Plaintiff.

(Continued on Next Page)

Walter E. Tuvell, Jr. - May 16, 2014

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1 PTSD?

2 A. From my understanding, this sort of
3 psychological condition can have many roots. Many
4 of them can go back to childhood, even in early
5 childhood where the patient has no memories. She
6 told me that too. That's my understanding from
7 other sources anyway. However, the imminent cause
8 was certainly the Microsoft thing.

9 Q. When you say "the Microsoft thing," do you
10 mean the withdrawal of an offer of employment in
11 April of 1997, after you and your family spent a
12 weekend in the State of Washington?

13 A. Yes and no.

14 Q. What does that mean, "yes and no"?

15 A. The yes part means that that -- what you
16 just stated, the withdrawal of an offer, was part of
17 the trauma. The no part means something else was
18 part of the trauma.

19 Q. And what else was part of the trauma?

20 A. Really, I didn't care that much about
21 withdrawing the job offer. All I cared about is
22 what they did to me and my family. They accused my
23 wife of not being good enough to be a Microsoft
24 wife. That hurt a lot. That really drove me over

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24

1 the edge.

2 Q. What words did they use that suggested your
3 wife wasn't good enough?

4 A. Well, when they first told me they were
5 withdrawing the offer, what they said was, "We're
6 withdrawing the job offer because you have bad
7 business judgment." I pushed with "What do you
8 mean? What do you mean?"

9 The woman I was talking to, the HR person
10 there, Meg MacGougan, eventually ended by saying,
11 "Your wife can't make the move to Microsoft." So
12 that's it.

13 Q. The "can't make the move," was that, in
14 part, because you and your wife asked for an
15 18-month transition package?

16 A. I think that had nothing to do with it.

17 Q. Did you speak with anyone in advance of
18 your deposition today?

19 A. I spoke with many people in my life. What
20 do you mean?

21 Q. Have you spoken with anyone in advance of
22 your deposition today about your deposition?

23 A. Yes.

24 Q. Other than your attorney, who have you

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1 from IBM. Those I read essentially all the time,
2 for years, three years now. Those were not read,
3 quote, in preparation for this deposition. That's
4 just stuff that I do always.

5 Q. Have you read the transcripts of the
6 depositions?

7 A. Transcript of whose deposition?

8 Q. Dr. Snyder, Kathy Dean, Dan Feldman.

9 A. No, I have not. When you say read them, I
10 assume you mean read the whole thing. I have
11 occasionally dipped into those and read maybe a
12 maximum of ten -- a maximum of some of the content
13 of them, at most ten different pages of those
14 depositions. I do that by searching in a word
15 processor, you know, a PDF reader, for specific
16 terms I recall being said because I was present at
17 the deposition. I just want to look up what was
18 said in those instances.

19 Q. Mr. Tuvell, in the course of a week, let's
20 say, since this lawsuit was filed, how many hours do
21 you spend on the lawsuit?

22 A. Well, initially during the first IDRs in
23 August of 2011, it was essentially "24/7." That
24 number is in quotes. It was really more like

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1 22 hours a day for two to three weeks.

2 There have been other weeks in which I've
3 done, I would say, less than ten hours. I doubt if
4 there's many weeks when I have done less than ten
5 hours.

6 So that's your answer. It's somewhere
7 between 10 and 20 to -- 10 hours a week and 22 hours
8 a day.

9 Q. And you are interested in the legal system,
10 Mr. Tuvell?

11 A. Initially, no. I'm only interested in the
12 legal system insofar as I'm involved in it.

13 Q. Didn't you refer to yourself in some of
14 your documents as almost a lawyer in this case?

15 A. Yes. I think I said "lawyer in all but
16 degree." That's correct.

17 Q. Is it accurate that in fact you have
18 drafted some of the documents in this case?

19 MR. MANTELL: Objection.

20 A. Absolutely not.

21 Q. You have not done any of the drafting?

22 MR. MANTELL: Objection.

23 A. No.

24 MR. MANTELL: Hold on. First of all, that

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1 you. You were out of work at IBM for a good portion
2 of July of 2011 due to the surgery that you had and
3 then a vacation. You returned to work in early
4 August of 2011. Isn't it the case that before you
5 returned to work in early August, you had already
6 started the writing of your complaints?

7 A. The short answer to that is yes. Would you
8 like the longer answer?

9 Q. No. I will take that one for the moment,
10 Mr. Tuvell.

11 A. Fine.

12 Q. If you had started that writing before
13 August and then on September 8th, IBM has asked you
14 to see a psychotherapist and Stephanie Ross has
15 talked to you in August about this hypomanic writing
16 for 22 hours a day, did you not think that it might
17 be helpful for you to go see somebody that might be
18 able to provide you some relief?

19 A. Yes, and I was seeing Stephanie Ross for
20 exactly that purpose.

21 Q. Okay. You said the first time you saw a
22 therapist or counseling was approximately 1988. How
23 old were you in 1988, Mr. Tuvell?

24 A. I was born in 1947.

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1 a bunch of other companies.

2 The people that worked in the area that I
3 did at OSF, which was called "DCE," distribute
4 computing environment, was actually more involved in
5 the higher level plane of architecting a new system
6 from pieces that came from all these companies that
7 belonged to the consortium, but we did not write
8 that software. The people that wrote that software
9 are what is generally called a "developer." I was
10 at a higher level sort of integrator-like thing. It
11 was not management. That was the position, the main
12 position.

13 Now, that's true for all except the last
14 year. The last year I was in the job of virtual
15 machine developer.

16 So that's what is properly so-called a
17 "developer." That's the distinction I want to make
18 here. You said "developer," and I want to make it
19 clear that that's what I did.

20 Q. At Open Software Foundation, you did have
21 some issues, didn't you? There were some things you
22 were unhappy about?

23 A. Not until the last year because that's when
24 the Microsoft thing intervened.

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1 Q. Well, you wrote something called "Sleepless
2 in Boston. How Microsoft Raped my Family While
3 Recruiting Me, January 24 to April 20, 1997," didn't
4 you?

5 A. Sounds right.

6 Q. That's a long document that you sent to
7 three individuals at Microsoft. Actually, you sent
8 it to more than three individuals, but it was
9 directed to Meg MacGougan, Margaret Johnson, and
10 David Thompson?

11 A. I believe she pronounced it "MacGougan,"
12 but yes.

13 Q. And you also sent a copy of this to Bill
14 Gates?

15 A. I believe I did.

16 Q. Who was Bill Gates at the time you sent him
17 this missive?

18 A. Chairman and CEO of Microsoft.

19 Q. The document is about your experience of
20 being recruited by them and then being told they
21 were withdrawing the job offer?

22 A. Yes, but, again, the withdrawal was not the
23 real issue. The real issue was raping my family, as
24 I wrote there and explained earlier.

Walter E. Tuvell, Jr. - May 16, 2014

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1 Q. The rape was what, that they said your wife
2 did not appear to want to move to Washington?

3 A. Yes. They didn't exactly say that, but
4 they basically said she's not a fit wife to be a
5 Microsoft employee's wife.

6 Q. Was it an injury to her? I mean, did you
7 consider this a rape because of what they said about
8 your wife as opposed to about you?

9 A. It was both. She was devastated, and I was
10 too. I say that not because of what she said to me
11 but because of what I observed of her. I'm not
12 breaking that spousal privilege.

13 Q. What is it that they said about you that
14 was devastating?

15 A. Nothing in particular. I mean, they
16 admitted they lied when they said I had bad business
17 judgment and that's why they were not hiring me.
18 That didn't bother me at all, except for the fact
19 that they lied and tried to blame me when it was
20 really her that they were blaming.

21 Q. Mr. Tuvell, I believe the circumstances are
22 reversed, that they first indicated that it was your
23 family's unwillingness to move, and then only after
24 you pushed back on that did they say it was your

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1 business judgment. Did I get that wrong?

2 A. Actually, you may be right. I don't
3 remember which came first and which came second. I
4 do remember they said the bad business judgment
5 thing as a lie to try to hide what was the real
6 reason. The real reason was -- quite clearly, as it
7 became, that they didn't like my wife.

8 Q. As we sit here today, you do not believe
9 that it was your business judgment that kept
10 Microsoft from making the job offer?

11 A. It was of course not my business judgment
12 that had to do with anything. I was there as a
13 technical person. Had it been a manager or some
14 such thing, that may have been a sensible critique.
15 It was absolutely false. Everything I did with
16 respect to Microsoft was technical, writing code,
17 designing things. That's got no business judgment
18 involved in it period.

19 Q. Who is Art?

20 A. Art Sapsevitz?

21 Q. Yes.

22 A. He was my manager at the time at AT&T/Bell
23 Labs. When I say "at the time," I mean at the time
24 when I left AT&T to go to Open Software Foundation.

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1 people. It's probably in one of these e-mails that
2 I produced to you. I'm not sure. I can name some
3 of the names that I believe I remember. Jignesh
4 Patel -- the name is printed right here -- he was
5 the hiring manager. Troy Keuhl, I believe, was a
6 same level supervisor, was and is, same level
7 supervisor at Imprivata, same level as Jignesh; Rob
8 Calder, similarly the same level as Jignesh at
9 Imprivata; Chris Shaw, who was the boss of the other
10 three managers I just mentioned. Those are manager
11 type people.

12 I had two or three interviews in all. I
13 don't know the order in which I talked to all these
14 people or to the other people I am going to mention.
15 I had in addition to those manager interviews some
16 interviews with some technical people that I would
17 be working with, co-workers.

18 Q. And so the interview took place in February
19 of 2012?

20 A. That would sound about right.

21 Q. Did you go to the Imprivata offices in
22 Lexington?

23 A. I did.

24 Q. So these were in-person interviews?

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1 A. They were.

2 Q. Over more than one day?

3 A. Yes, but not all consecutive days. I
4 should amend that by saying before I visited there
5 at all, I did have a phone interview with Jignesh.
6 That's what triggered the on-site interviews.

7 Q. You did not tell any of the interviewers
8 when you were there that you were on a leave of
9 absence from IBM?

10 A. I believe I did not. I believe that is
11 correct.

12 Q. You did not tell them that you were on a
13 disability or had been on a disability leave?

14 A. I'm sure I didn't tell them that.

15 Q. So they believed when they made you a job
16 offer that you were actively working at IBM?

17 A. Yes.

18 Q. And you didn't do anything to tell them
19 otherwise?

20 A. That's correct.

21 Q. Then they made a written job offer to you
22 on February 28, 2012?

23 A. That sounds approximately like the correct
24 date.

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1 (Document marked as W. Tuvell
2 Exhibit 5 for identification)

3 Q. Exhibit 5 is a photocopy of a letter dated
4 February 28, 2012 from Donna Synan, Human Resources
5 Manager at Imprivata, to Walt Tuvell. That's you.
6 It is signed by you on February 28, 2012. Would you
7 agree this is a job offer?

8 A. (Examines document) Yes.

9 Q. They were offering you a base salary of
10 \$135,000?

11 A. Uh-huh.

12 Q. Is that yes?

13 A. Yes, it is.

14 Q. You accepted the job offer, and you began
15 on Monday, March 12th?

16 A. Yes, I did. This here is only showing the
17 expectation of that starting date. What you just
18 stated was the actuality of that starting date, but
19 it turns out that that was correct as well.

20 Q. It says here a base salary of \$135,000
21 annually. That was your starting salary. You are
22 still employed by Imprivata?

23 A. Yes.

24 Q. The position they were offering you was

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1 performance architect, do you see that in the first
2 sentence?

3 A. Yes.

4 Q. Is that still your title?

5 A. It is.

6 Q. Do you still report to Mr. Patel?

7 A. I do not.

8 Q. When did that change?

9 A. About two months ago.

10 Q. Is Mr. Patel still employed by Imprivata?

11 A. He is not.

12 Q. He had been the director of quality
13 assurance. Is he no longer the director of quality
14 assurance?

15 A. He doesn't work there at all, so he
16 certainly couldn't be the director of quality
17 assurance.

18 Q. When he left, was he the director of
19 quality assurance?

20 A. He was.

21 Q. So he was still your supervisor?

22 A. At the time he left, yes. He's the only
23 supervisor I ever had at Imprivata up until the time
24 he left.

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1 Q. Who is your current supervisor?

2 A. We have no one yet that has filled that
3 position. That position is being searched for. The
4 person to fill that position is being searched for.
5 In the interim, I report directly to the person who
6 had been Jignesh's boss at the time he left. That
7 person's name is "Mike Fandozzi."

8 Q. This offer letter says that you will be
9 eligible to participate in the company's benefits
10 programs. Are you covered under health insurance at
11 Imprivata?

12 A. Yes.

13 Q. How soon after you started at Imprivata
14 were you able to begin that coverage?

15 A. I think it was probably effective
16 immediately. However, I'm thinking -- yes. I
17 believe this is correct. I could check with my
18 wife, who I think -- and this would not be a
19 privilege breaking communication. I think what she
20 wanted to do --

21 MR. MANTELL: Don't testify with respect to
22 confidential communications between you and your
23 wife.

24 A. So I won't say what she wanted do. Let me

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1 tell you what I think may be the case of what
2 happened.

3 Okay, let me preface this by saying my wife
4 handles the finances in our house. I don't know
5 that much about them.

6 I'm recalling here from my understanding,
7 which may be incorrect, but I think I started there
8 in the middle of the month, or something like that,
9 while I was still covered by IBM. You know, I don't
10 remember this. I don't remember if I was covered by
11 IBM benefits or not up to the end of March and then
12 I had to cut over to the Imprivata benefits in
13 April.

14 There was something, some vague memory that
15 I have -- and it's only a vague memory because I
16 didn't do what she did -- about, you know, not
17 double-dipping, or however you want to phrase that,
18 being covered twice.

19 Now, I may be wrong about this. I may not
20 have had IBM benefits at this time because I was on
21 zero salary. Wait a minute now. No, no. I think I
22 was COBRA-ed in, or maybe there's some phrase like
23 that. You can continue having insurance from your
24 old employer until the new one picks it up. There's

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1 some phrase like that.

2 Anyway, my wife is scrupulous about - she
3 always is -- that we do this properly with respect
4 to getting benefits.

5 Anyway, I'm pretty sure I was eligible to
6 get benefits immediately upon hire at Imprivata.
7 It's just that we didn't partake in those benefits
8 until the proper timing.

9 Q. So you are covered at Imprivata --

10 A. Yes.

11 Q. Well, let me finish. You are covered at
12 Imprivata under health insurance, vision insurance,
13 dental insurance, and that covers you and your
14 family?

15 A. Yes.

16 Q. Is there a bonus plan?

17 A. For some employees there is. There is not
18 for me.

19 Q. So you are not eligible to participate in a
20 bonus plan?

21 A. Not a bonus properly, so-called. As you
22 look here, there is something to do with some
23 options for stock, common stock (indicating). That
24 I do partake in, but not the bonus, so-called.

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1 Q. When you were hired, you were granted the
2 option of purchasing 5,000 shares of the company
3 stock. Did you do that?

4 A. Yes and no. I was not eligible to purchase
5 those upon hire by the company, which is what you
6 stated. Instead that happened sometime later. My
7 recollection is it was a number of months later,
8 four, six, eight months. At that point Jignesh came
9 to me and said, "Here's your stock option grant."
10 End of answer.

11 Q. Have you received any additional grants of
12 stock since you've been at Imprivata?

13 A. No.

14 Q. What was your last salary at IBM?

15 A. I don't rightly recall. I'm sure it's on
16 record. My understanding is it was a little bit
17 under this 135 printed here. Maybe it was 133,
18 almost a negligible difference.

19 Q. When you began interviewing at Imprivata
20 and got a job offer and accepted employment at
21 Imprivata, you did not advise IBM that you were
22 doing that?

23 A. Correct.

24 Q. And at the time you were on a leave of

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1 products?

2 A. Yes.

3 Q. And you got rid of it?

4 A. I did. I should amend that to say the
5 one -- okay, let's be a little more careful here.
6 One thing they didn't have on the Netezza laptop was
7 Microsoft Outlook, the e-mail program. Instead they
8 use Lotus Notes. Lotus Notes, as I said earlier,
9 includes other things other than just e-mail. I
10 believe, although I'm not totally certain about
11 this, that Lotus Notes also supports a bunch of
12 Microsoft Office like programs, you know,
13 Presentation Manager document, Editor, stuff like
14 that. The reason I'm not entirely sure about that
15 is because I never used it.

16 I do know they gave me Lotus Notes. If
17 that Lotus Notes had those Office-like programs on
18 it, it's not entirely clear to me that this laptop
19 came with these other Microsoft -- actual real, live
20 Microsoft Office products. It's likely it did. I'm
21 not entirely sure of that because I never used it.
22 I just blew it away.

23 Q. Until about May 18th of 2011, you did not
24 have any issues working with Dan Feldman or Fritz

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1 Knabe?

2 A. No serious issues. There was one small
3 issue which I call "database transport." Fritz gave
4 me an order to do something that used an entire day,
5 which was totally wasteful of that day. It was a
6 useless project. I did it anyway, the database
7 transport thing. It turned out to be nonsense.

8 I did complain to Dan about that, but it
9 went no further than a complaint to Dan about that.
10 It was a very mild complaint.

11 Q. The event which triggered the problems at
12 IBM began on May 18th?

13 A. Yes.

14 Q. That's when Mr. Knabe asserted to Dan
15 Feldman that you had failed to produce certain Excel
16 graphics as instructed?

17 A. That's right.

18 Q. At the time, May 18, 2011, you didn't have
19 Excel on your ThinkPad, did you?

20 A. I certainly did not.

21 Q. You became upset that Mr. Knabe told
22 Mr. Feldman that you had not produced Excel when he
23 asked you to, some information in Excel, because you
24 said he never asked you to do that; is that right?

Walter E. Tuvell, Jr. - May 16, 2014

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1 A. Yes.

2 Q. Why is that?

3 A. Because I have seen a lot of lies that he
4 produced in the discovery documents that we have
5 received.

6 Q. What lies?

7 A. When he lied about the incident about the
8 yelling that Fritz did. For example, when he lied
9 about me -- how did he phrase it -- making
10 outrageous claims or something about -- I forget
11 exactly. He lied about things that I said, which I
12 certainly did not say. He lied about me not saying
13 certain things that I did say properly. He's a
14 liar, yes.

15 Q. On June 8th, you allege that Mr. Knabe
16 yelled at you in front of co-workers, do you recall
17 that?

18 A. Yes.

19 Q. Steve Lubars was sitting there on that
20 occasion?

21 A. Right between the two of us. Actually, I'm
22 not sure if he was standing or sitting. I have to
23 be careful.

24 Q. But you now are aware that Steve Lubars

Walter E. Tuvell, Jr. - May 16, 2014

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1 says Fritz didn't yell?

2 A. Yes, I am.

3 Q. Are you aware that there are people that
4 say you yelled?

5 A. Yes, I am.

6 Q. Did you yell?

7 A. No, I did not.

8 Q. Did you storm out?

9 A. No, I did not.

10 Q. Did you say, "I don't have to take this
11 shit" and get up and walk out?

12 A. Absolutely not.

13 Q. What did you do?

14 A. Okay. So I was sitting at my desk, which
15 was -- okay, I can draw a picture, but I was sitting
16 at my desk. I actually had my feet up on the desk.
17 That's the way I work. I did that since childhood,
18 have my feet up and write stuff. As my feet were up
19 on my desk like this (indicating), Steve Lubars was
20 sitting where Rob is. Fritz came in the door and
21 stood or actually semi-leaned on the desk there on
22 the other side of Steve. Okay, so I was working
23 away. Fritz starts talking to Steve about
24 something. I heard my name mentioned. At that

Walter E. Tuvell, Jr. - May 16, 2014

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1 point I started paying attention. This was after
2 they had been talking for several minutes.

3 MR. MANTELL: I have to take this call.

4 Excuse me.

5 (Robert S. Mantell, Esq., exits)

6 (Pause)

7 (Robert S. Mantell, Esq., enters)

8 Q. Do you remember, Mr. Tuvell, where you left
9 off?

10 A. Yes. I was sitting with my feet up on the
11 desk. They were talking for a small number of
12 minutes when I was not paying attention. I was
13 working. I heard my name. I started paying
14 attention. Steve was saying something about, "Walt
15 has not given me the numbers yet." That was
16 completely correct.

17 What had been going on was Steve and I had
18 been working together. He was working on -- not
19 closely together, but together a little bit for a
20 day or two. He was working on something called the
21 "Fudge Factor model." What this Fudge Factor model
22 was was basically trying to explain why Wahoo was
23 not running as fast as Fritz' theory said it should.
24 I was to supply data numbers to Steve so that he

Walter E. Tuvell, Jr. - May 16, 2014

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1 could plug those numbers into his Fudge Factor model
2 equations and come up with some explanation about
3 why the Wahoo machine was so slow, but when we put
4 the whole Wahoo machine together with all its
5 software and all of its hardware components, it was
6 really going to be really fast, just like Fritz said
7 it was going to be. Now, all that makes some kind
8 of sense. I won't get into the detail of how much
9 sense it makes. That's all fine.

10 So Steve said that I hadn't supplied him
11 with the numbers. That was totally correct.
12 Earlier that day we had had a meeting, so-called
13 standup meeting, which a lot of techno companies do
14 these days, Scrum/Agile, and all that stuff. I
15 explained what the deal was. I explained the deal
16 was that I was working with Steve; that Steve had
17 asked me to produce numbers in a certain way; I was
18 working on a way to do that; that by the end of that
19 day, I was going to give Steve a set of numbers for
20 one of these tests out of about 22 or so that we
21 wanted to run and/or for Steve to make his Fudge
22 Factor model. At that time -- that was at 3:00 p.m.
23 or something -- I had not given him the numbers
24 because I was still working on them.

Walter E. Tuvell, Jr. - May 16, 2014

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1 Fritz at that time became really heated
2 under the collar. He turned on me. He said, "Walt,
3 I told you I wanted these numbers." He started
4 yelling really loud. He said, "I told you I wanted
5 these numbers. Why the hell didn't you" -- I
6 should be careful. I don't attribute any swearing
7 to Fritz. I never did, and I don't think he did it
8 either, as far as I remember. Anyway, it was loud.
9 Now, Fritz has a loud voice in general. This was
10 really loud.

11 I stood there just shocked. I had no idea
12 what he was talking about because I had already
13 explained to him four times earlier that day exactly
14 what I had done. Now he was yelling at me for not
15 doing the things I had already told him I hadn't
16 done. Everything I had done was exactly on project.

17 Q. What were his exact words to you? What did
18 he say?

19 A. Okay, I was in shock. People that are in
20 shock sometimes don't have super clear memories of
21 exact details. People that have been stabbed don't
22 know they have been stabbed sometimes.

23 All I know is he was yelling at me. I
24 can't remember the exact words. He was saying quite

Walter E. Tuvell, Jr. - May 16, 2014

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1 clearly that I had failed to produce certain work
2 products that he had ordered me to do, and that was
3 false. I had produced all the work products he had
4 tasked me to do. I had told him exactly what I had
5 done, the numbers test that he had tasked me to do
6 four times earlier that day, and he was yelling at
7 me falsely.

8 Q. Mr. Tuvell, I'm just trying to get a simple
9 answer to a question. If I understand what you are
10 saying to me, you do not remember exactly what
11 Mr. Knabe said to you because you were in shock?

12 A. I was in shock. I do remember he yelled at
13 me, but not the exact words that he said. I
14 remember the gist of it was he was yelling at me
15 loudly for not producing certain work products that
16 he had tasked me to do. That was false.

17 Q. And what did you do in response?

18 A. After I was totally shocked and taken back
19 by this, I said, "Fritz get off my back" with about
20 that loudness and intensity, which I know he can't
21 capture here, but that's the one thing I said with
22 any loudness and with any, quote, anger. It was
23 totally defensive.

24 Q. Then did you continue working?

1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Ken A. DiFraia, RPR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 16th day of
6 May, 2014, at 10:14 a.m., the person hereinbefore
7 named, who was by me duly sworn to testify to the
8 truth and nothing but the truth of his knowledge
9 touching and concerning the matters in controversy
10 in this cause; that he was thereupon examined upon
11 his oath, and his examination reduced to typewriting
12 under my direction; and that the deposition is a
13 true record of the testimony given by the witness.

14 I further certify that I am neither attorney or
15 counsel for, nor related to or employed by, any
16 attorney or counsel employed by the parties hereto
17 or financially interested in the action.

18 In witness whereof, I have hereunto set my hand
19 and affixed my notarial seal this 2nd day of June,
20 2014.

21 *Ken A. DiFraia*

22 Notary Public

23 Commission expires 3/11/2016
24

Volume I
Pages 1 to 185
Exhibits 1 to 50

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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-----x
WALTER TUVELL,           :
      Plaintiff,         :
      vs.                 : Civil Action No.
                           : 13-cv-11292-DJC
INTERNATIONAL BUSINESS    :
MACHINES, INC.,          :
      Defendant.         :
-----x

```

DEPOSITION OF RUSSELL MANDEL, a Witness on the hereinbefore-entitled action, called on behalf of the Plaintiff, pursuant to Notice before before Deborah Smith, a duly qualified Notary Public in and for the State of Connecticut, held at the Law Offices of Jackson Lewis, 1010 Washington Boulevard, Stamford, Connecticut, on June 4, 2014 at 10:00 a.m.

PRESENT:

(By telephonic means)
Rodgers, Powers & Schwartz LLP
(By Robert S. Mantell, Esq.)
18 Tremont Street, Suite 500
Boston, Massachusetts 02108
617.742.7010
RMantell@TheEmploymentLawyers.com
for the Plaintiff.

(Continued)

Russell Mandel - June 4, 2014

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1 at the first page, and I won't ask you about the
2 rest for now.

3 A. Oh, okay.

4 Q. Okay. What is this document?

5 A. This looks like a copy of my Open Door
6 report.

7 Q. Okay. And there is a date on it
8 September 15, 2007.

9 Is it fair to say that is when you
10 completed the report?

11 A. Unless it was merely a draft, I can't
12 tell.

13 Q. Well, is it fair to say that
14 September 15th was the date that you completed this
15 version of the draft?

16 A. I would assume so. There would be no
17 reason not to put that date on it.

18 Q. Now, you see the handwriting on the first
19 page of Exhibit 6?

20 A. Yes, I do.

21 Q. And is that your handwriting?

22 A. Yes, it is.

23 Q. Can you tell me why you have that
24 handwriting there?

1 CERTIFICATE

2 STATE OF CONNECTICUT

3 SS: Milford

4 COUNTY OF FAIRFIELD

5
6 I, Deborah Smith, a Notary Public in and
7 for the State of Connecticut, duly commissioned and
8 qualified and authorized to administer oaths, do
9 hereby certify that I was attended at the Law
10 Offices of Jackson Lewis, 1010 Washington Boulevard,
11 Stamford, Connecticut, on June 4, 2014 at 10:00
12 a.m., by counsel for the respective parties as
13 appears in the herein-entitled cause and the
14 deponent named in the foregoing deposition, to wit:
15 Russell Mandel; that said deposition was taken
16 stenographically by me in the presence of counsel
17 for the respective parties and reduced to
18 typewriting
19 under my direction; that the foregoing is a true and
20 correct transcript of the testimony.

21 I also certify that I am neither of
22 counsel nor attorney to either of the parties to
23 said suit, nor am I interested in the outcome
24 of said cause.

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Witness my hand and Seal as such
Notary Public at Milford, Connecticut, this
12th day of June, 2014.

----- NOTARY PUBLIC

My Commission Expires
January 31, 2019

CSR No. 197

Personal and Confidential
Daniel J. Feldman
Director, Netezza Performance Architecture
Date: 3 August 2011

3/1

Memorandum to: Walter Tuvell, SN 0g3821
Subject: Warning letter



- Proper workplace behavior is a condition of employment at IBM. You have violated this condition by engaging in the following conduct;
 - Unprofessional, disrespectful, demeaning, disruptive, offensive, or rude actions or comments, verbally or via notes; specifically, your email of 20 July 2011 addressed to Garth Dickle and me.
 - Conduct in the workplace that creates, encourages, or permits an inappropriate work environment;

IBM will not tolerate any behavior which, in management's judgment, is disruptive to the work environment or otherwise violates company policies, such as the Business Conduct Guidelines. As a result of your inappropriate conduct, you are being given this formal warning letter.

The following applies to you as a condition of your continued employment with IBM:

- Immediately cease engaging in the behavior outlined above and any behavior or actions which are, or could be interpreted as, inappropriate, unprofessional, or otherwise violating company policy, such as the Business Conduct Guidelines.
- Read the IBM Business Conduct Guidelines and certify that you understand these Guidelines and agree to abide by them. You must confirm this to me in a Lotus Note within five business days of the date of this letter; approved time off for medical leave and vacation will not be counted as business days for purposes of such confirmation.
- Provide status updates and work deliverables as requested by your management

In addition, you must continue to adhere to all IBM conditions of employment. Future violation of this, or any other IBM condition of employment, may lead to your immediate dismissal without benefit of another warning period.

Manager's Signature: [Signature] Date: 8/3/11
Daniel J. Feldman

I understand the content of this letter. Employee refused to sign
Employee's Signature: _____ Date: 8/3/11
Walter Tuvell

Cc: Employee Records



Re: SWG-0436579 discussion

Walter Tuvell to: Chris Kime

Bcc: walt.tuvell

12/01/2011 08:28 AM

From: Walter Tuvell/Marlborough/IBM

To: Chris Kime/Austin/IBM@IBMUS

Bcc: walt.tuvell@gmail.com

Default custom expiration date: 11/30/2012

Chris -

Thanks for the offer/invitation of talking with you today. I'm prepared to call you at 12:30 CST (1:30 EST), but if it's more convenient for you, you can call me instead: 781-475-7254(c).

In the meantime, I can tell you that I'm coming back from an STD lasting back to Aug. I now have a completely clean bill of health though, symptom-free, will have no trouble commuting to work, am working-out and running again, etc. While away I took some time to think about what I like to do best, compared to the "performance architect" role I'm currently in, and am hoping to get back into more of a development role. Scanning GOM turned up your opening, hence this inquiry.

That's not to say I don't like performance per se, or that I haven't had success with it, insofar as it goes. Just that in order to really have the effect on a product that I think I can contribute, I believe I need to approach the performance aspect more from a developer's viewpoint. Else, the job tends to become more of a "performance test/QA" role, which I don't think takes best advantage of my background/potential. This is analogous to a regular (non-performance-specific) QA engineer, who can find bugs, but can't "really understand" their import, in particular how fixing them in "best ways" can improve the product optimally or lead to new insights, unless they're doing the development too.

I'm attaching some samples of my work at IBM (can't give you samples of what I've done elsewhere, of course :-). The names of the files map to names of projects as given in my (long-form) resume. I also moon-lighted by designing the format/template of the Word/LibreOffice docs, and the encrypt docs.

Cheers!

- Walt



BlktraceBlkparseBtt.pdf



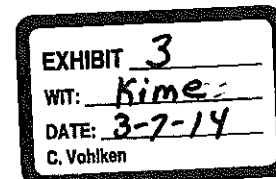
PerfScore.pdf



PMtest.pdf



nzVtCapture.pdf



TUVELL000991



nzVtCapture.sh.pdf



perfScore.py.pdf



Re: Happy New Year
Chris Kime to: Walter Tuvell

01/06/2012 12:48 PM

From: Chris Kime/Austin/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Default custom expiration date: 01/05/2013

History: This message has been forwarded.

Walt,

I hope the new year finds you well and that you have a great 2012.

I have been following your updates to the QRCode information in Wikipedia. Very impressive explanation of the technology, and another demonstration of your deep technical skills and ability to produce solid documentation.

Unfortunately, I have discussed your situation with my up-line management and I underestimated the difficulty of moving forward with bringing you to the team. We cannot move forward with taking you directly from being on short term disability - this will receive very close scrutiny from the operations people in our organization. Given the current needs of our group there is also concern about the work being to your liking and keeping you as a productive and satisfied member of the team.

I apologize that my earlier optimism did not reflect the reality I have run into, and wish you the best of luck with your search for a new and fulfilling opportunity in 2012.

Regards,

Chris

=====

Chris Kime
(512)286-6981
IBM/WebSphere
Financial Services Solutions Development

=====

Walter Tuvell | Hi, folks - I know Chris isn't back... | 01/03/2012 06:44:06 AM

From: Walter Tuvell/Marlborough/IBM
To: Chris Kime/Austin/IBM@IBMUS, Harvey Harrison/Marlborough/IBM@IBMUS, Brian Doherty/Marlborough/IBM@IBMUS
Date: 01/03/2012 06:44 AM
Subject: Happy New Year

Hi, folks -

EXHIBIT 11
WIT: Kime
DATE: 3-7-17
C. Vohlken

TUVELL001011

I know Chris isn't back from vacation until later this week, but I thought I'd wish you all a happy new year preemptively. I hope you had a good holiday season, and that the new year holds peace and prosperity for you and yours.

A little update on my QR Code project, which you may recall I mentioned. It's reached Draft 1 stage (attached). It needs just one more page (Page 6), on Error Correction & Detection, and it'll be finished, for my purposes.

There remains a question about how to publish it. My interest in QR Code originally started because my wife & kids wanted me to help explain QR Codes to them, and then it migrated to a Wikipedia work item. As it has evolved, I've been pleasantly surprised to see how well-engineered it is, so the paper is now a bit beyond what Wikipedia articles normally look like (much more detailed "techno-nonsense").

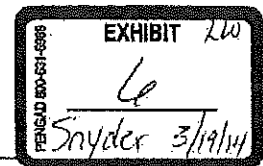
What might be better than Wikipedia per se is to publish the paper as an informative article somewhere else, and simply have Wikipedia point to it. There are a number of informative/tutorial sites where one can learn about QR Codes, but not, I think, at the level I've tried to achieve. I'll probably contact some of those places, and ask their advice. Of course, if you have any suggestions, that would be great too, but don't feel obligated to involve.

The QR Code project has been great fun, but it'll be even more fun to get back to more "serious" work, with meaningful objectives and deliverables, and all that. So I'm really forward to everybody at IBM finally getting back from time-off, so the paperwork for transfer to your group can be signed-off and completed.

With any luck, I'll be seeing you shortly!

- Walt

[attachment "QRCode-InANutshell-DRAFT1.pdf" deleted by Chris Kime/Austin/IBM]



From: Stewart Snyder
To: Kathleen Dean
CC:
BCC:
Sent Date: 2011-10-04 20:26:45:000
Received Date:
Subject: Re: Tuvell
Attachments:

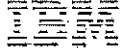
OK, thanks Kathy, and just to confirm for Walter, in this case the input from the LSW will be sufficient.

Stew

B. Stewart Snyder, III, M.D.
Physician Program Manager
IBM Integrated Health Services
Ph: 919.543.6161 FAX: 919.543.0834
Internet: bssnyder@us.ibm.com

International Business Machines, Inc.
Dept. XE6B/Bldg. 205
3039 Cornwallis Road
RTP, NC 27709

The truth is the truth, whether you choose to believe it or not.



Kathleen Dean--10/04/2011 02:21:45 PM--Hello Dr. Snyder, The last email that I sent to Walter Tuvell was on 09/21/2011. He is to provide an

From: Kathleen Dean/Fishkill/IBM
To: Stewart Snyder/Raleigh/IBM@IBMUS
Date: 10/04/2011 02:21 PM
Subject: Re: Tuvell

Hello Dr. Snyder,

The last email that I sent to Walter Tuvell was on 09/21/2011. He is to provide an MTR form from his LSCW before 10/17/2011.

I am to contact Walter's Nurse Practitioner this week. She had been on vacation and returning on 10/04/2011. Figured I give her a day or two to get caught up. Thanks for inquiring. I'll continue to keep you posted. Kathy

Kathleen Dean--09/21/2011 03:07:23 PM--Walter, You are correct about having an updated MTR form

completed by your LSW in order for me to re

From: Kathleen Dean/Fishkill/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Al Pfluger/Fishkill/IBM@IBMUS
Date: 09/21/2011 03:07 PM
Subject: *IBM Confidential: Re: IBM MTR form - Walter Tuvell

Walter,

You are correct about having an updated MTR form completed by your LSW in order for me to review your STD Benefits extension beyond the 10/17/2011.

Thanks, Kathy

Kathleen A. Dean, R.N. COHN, COHC
IBM Health Services Advisor
Integrated Health Services, IBM EFishkill
Phone: (845) 894-9573 or tieline 533-9573
Fax: (845) 892-3226 or tieline 532-3226
email: deanka@us.ibm.com

Access the STD/MTR (Short Term Disability Medical Treatment Report) form at:
<http://w3-01.ibm.com/hr/us/hrforms/data/mtr.pdf>

To confirm receipt of the STD/MTR form:
call 1-888-553-5752, option 2, from 8AM-7PM EDT

Access health information at: http://w3-1.ibm.com/hr/us/your_health.html

Access ergonomic information at: <http://w3-1.ibm.com/hr/us/ohs/gohsweb.nsf/pages/ergonomics.htm>

Access Wellness for Life: <https://www.wellnessforlifecenter.com>

Walter Tuvell--09/21/2011 02:55:53 PM--Thank you. It does make much more sense for my regular treating LSW to continue treating me, instea

From: Walter Tuvell/Marlborough/IBM
To: Kathleen Dean/Fishkill/IBM@IBMUS
Cc: Al Pfluger/Fishkill/IBM@IBMUS
Date: 09/21/2011 02:55 PM
Subject: Re: *IBM Confidential: IBM MTR form - Walter Tuvell

Thank you. It does make much more sense for my regular treating LSW to continue treating me, instead

of requiring me to go out and find a completely new/unnecessary psychiatrist. So I will talk to her about filling out the MTR.

But I do have a concern: Since she isn't a physician, she will be unfamiliar with this kind of MTR/STR form. I have your contact information, so please be aware she might need to contact you. Also, the MTR states on its instructions that it must be filled out by a "physician", but I'm taking your note to waive that requirement (my LSW will need to know that, so she's sure she won't be committing some kind of fraud). Incidentally, you should know she is in Amsterdam this week, and won't return until next week. I already have an appointment to see her when she returns next week.

Also, you mention Oct. 17, but currently the abusive C&A process is requiring me to report back to work under Dan Feldman, and I don't believe that will be possible (as attested to by my physician and LSW), so I expect I'll need STD extensions beyond that date. I've already written to you about this, but I wanted to repeat it, to be certain you understand.

-Walt Tuvell

Kathleen Dean--09/21/2011 02:42:19 PM--Walter, After consulting with our IBM Physician, please have your Licensed Social Worker (LSW) complete

From: Kathleen Dean/Fishkill/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Al Pfluger/Fishkill/IBM@IBMUS
Date: 09/21/2011 02:42 PM
Subject: *IBM Confidential: IBM MTR form - Walter Tuvell

Walter,

After consulting with our IBM Physician, please have your Licensed Social Worker (LSW) complete the attached MTR form.

I have approved your STD Disability to October 17th.

Attached is a Medical Treatment Report (MTR) form that is required to be completed by the employee's treating physician in order for IBM to determine eligibility for the IBM Short Term Disability plan or to request Workplace modifications.

Please have your treating physician complete and sign the MTR and fax to the number provided at the bottom of the form (1-919-543-0834). Employee is responsible for any costs associated with the completion of this form, and ensuring its return to IBM IHS (Integrated Health Services).

[attachment "Medical Treatment Report Form.pdf" deleted by Walter Tuvell/Marlborough/IBM]

Informational link regarding the Short Term Disability Plan Process.

<http://w3-01.ibm.com/hr/us/benefits/disability/stdplanworks.html>

Kathleen A. Dean, R.N. COHC
IBM Health Services Advisor
Integrated Health Services, IBM EFishkill
Phone: (845) 894-9573 or tieline 533-9573
Fax: (845) 892-3226 or tieline 532-3226
email: deanka@us.ibm.com

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Access health information at: http://w3-1.ibm.com/hr/us/your_health.html

Access ergonomic information at: <http://w3-1.ibm.com/hr/us/ohs/gohsweb.nsf/pages/ergonomics.htm>

Access Wellness for Life: <https://www.wellnessforlifecenter.com>

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Access Wellness for Life: <https://www.wellnessforlifecenter.com>

Stewart Snyder--10/04/2011 02:01:38 PM--Hi Kathy, Just wondered if you had heard anything further on this case. Any more epistles to Sam et

From: Stewart Snyder/Raleigh/IBM
To: Kathleen Dean/Fishkill/IBM
Date: 10/04/2011 02:01 PM
Subject: Tuvell

Hi Kathy,

Just wondered if you had heard anything further on this case. Any more epistles to Sam et. al.?

Stew

B. Stewart Snyder, III, M.D.

Physician Program Manager

IBM Integrated Health Services

Ph: 919.543.6161 FAX: 919.543.0834

Internet: bssnyder@us.ibm.com

International Business Machines, Inc.

Dept. XE6B/Bldg. 205

3039 Cornwallis Road

RTP, NC 27709

The truth is the truth, whether you choose to believe it or not.





Re: Need health service
Kathleen Dean to: Walter Tuvell

08/11/2011 03:06 PM

From: Kathleen Dean/Fishkill/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Default custom expiration date: 08/10/2012

Walter,

Can you call me now?

Thanks, Kathy

Kathleen A. Dean, R.N. COHN, COHC
IBM Health Services Advisor
Integrated Health Services, IBM Fishkill
Phone: (845) 894-9573 or tieline 533-9573
Fax: (845) 892-3226 or tieline 532-3226
email: deanka@us.ibm.com

Access the STD/MTR (Short Term Disability Medical Treatment Report) form at:
<http://w3-01.ibm.com/hr/us/hrforms/data/mtr.pdf>
To confirm receipt of the STD/MTR form:
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Access Wellness for Life: <https://www.wellnessforlifecenter.com>

Walter Tuvell | Kathleen, I need your professional (IHS) help. | 08/11/2011 03:00:38 PM

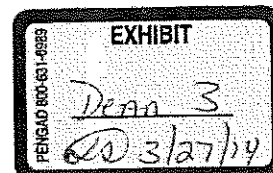
From: Walter Tuvell/Marlborough/IBM
To: Kathleen Dean/Fishkill/IBM@IBMUS
Date: 08/11/2011 03:00 PM
Subject: Need health service

Kathleen, I need your professional (IHS) help.

I have come down with a sudden condition, which will, I believe require STD, together with some longer-term solution, potentially involving an accommodation. I already know how about the MTR, and have downloaded the PDF, and know how to go about applying for the STD. But I don't know what to do beyond that. Can you please tell me how to go about that?

Thank you.

- Walt Tuvell



TUVELL000453

From: Stewart Snyder
To: Kathleen Dean; Al Pfluger
CC: Lydia Campbell; Zel Hunter
BCC:
Sent Date: 2011-09-13 16:16:34:000
Received Date: 2011-09-13 16:16:39:000
Subject: Re: *IBM Confidential: Walter Tuvell #0G3821
Attachments:

Hi folks,

I'm copying Lydia (and Zel) on this to keep her in the loop, because she may very well be hearing more about this case, as I doubt this employee will do what is required by IHS without major protest.

Well, Mr. Tuvell is certainly somewhat upset. I wonder if one reason he's only getting two hours sleep a night is because he was writing a 250 page book to send to Sam et. al. detailing his complaints? In addition to being very confrontational, he actually sounds somewhat paranoid. Based on the little I have seen so far that he has written I am of the opinion that he indeed does have a psych diagnosis, that he would benefit from psychotherapy, and that he is not benefitting, or at least not sufficiently, from his current treatment, since he apparently has not improved much in two months.

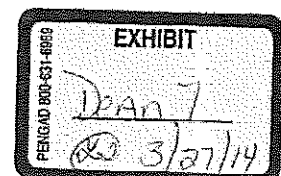
He doesn't know what he is talking about regrading FP's and how they fit into the overall healthcare picture though, and his provider isn't even a physician, but an NP. In addition, he does not understand psychotherapy and its uses. But frankly that's all irrelevant.

Our process for psych disorders is that after 6 to 8 weeks of being out of work we require an MTR from a psychiatrist, because if a person is ill enough that they can't work for that long then they have exceeded the expertise level of a family physician to deal with their mental illness, and he's not even seeing a physician. This is no different than requiring a patient with a back injury that has been OOW for 8 weeks under the care of his FP to see a back specialist before IHS will continue to support their absence.

We all know that not all FP's are created equally, and some certainly may be competent to continue care after most have reached the limits of their expertise, but we have no way on knowing when that is the case, so in the interest of making sure that our employees are receiving proper care we require information from a specialist if we are to continue to support their absence. He can protest all he wants, but that's what we do with other employees, so that is what we will do with him, as we are legally obligated to treat all employees the same.

Also, and no offense to nurses, but I've worked with a reasonable number of NP's and PA's, and none of them was up to the capability of a good FP physician. There were always areas where they were weak, and areas where they were pretty good, and in my experience unless they had specific and significant experience dealing with psych cases that was an area where they were typically weak.

Also, I'm pretty sure that we do not share our internal processes with employees, unless Legal tells us



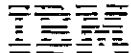
we have to do it.

Stew

B. Stewart Snyder, III, M.D.
Physician Program Manager
IBM Integrated Health Services
Ph: 919.543.6161 FAX: 919.543.0834
Internet: bssnyder@us.ibm.com

International Business Machines, Inc.
Dept. XE6B/Bldg. 205
3039 Cornwallis Road
RTP, NC 27709

The truth is the truth, whether you choose to believe it or not.



Kathleen Dean--09/09/2011 09:01:18 AM--Walter, I will support your IBM MTR Form from your family physician for one month while I confer wit

From: Kathleen Dean/Fishkill/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Al Pfluger/Fishkill/IBM@IBMUS
Date: 09/09/2011 09:01 AM
Subject: *IBM Confidential: Walter Tuvell #0G3821

Walter,

I will support your IBM MTR Form from your family physician for one month while I confer with our IBM Physician.

If you have a copy of your IBM MTR Form from your family physician dated 09/07/2011 please refer to Section II A. This is where it states "pt is in psychotherapy to help his acute stress. This ongoing."

I'll keep you posted after I have consulted with our IBM Physician.

Thanks, Kathy

Kathleen A. Dean, R.N. COHN, COHC
IBM Health Services Advisor
Integrated Health Services, IBM EFishkill
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Access Wellness for Life: <https://www.wellnessforlifecenter.com>

Walter Tuvell--09/08/2011 06:02:22 PM--Kathy and Al - I just took a closer look at the MTR form that was faxed to you.

From: Walter Tuvell/Marlborough/IBM
To: Kathleen Dean/Fishkill/IBM@IBMUS, Al Pfluger/Fishkill/IBM@IBMUS
Date: 09/08/2011 06:02 PM
Subject: Re: Just checking

Kathy and Al -

I just took a closer look at the MTR form that was faxed to you.

The wording "psychotherapist" and "acute" do not occur in the "IBM MTR". However, my PHYSICIAN did write that I am in "psychotherapy" for "acute stress". If that (my physician's writing, as opposed to the "IBM MTR") is what you were referring to, I did not realize it when I wrote my preceding note. Therefore, assuming that's the case, I offer my apologies for the implications I made that may have been wrong.

What my physician wrote is correct, but it seems you drew incorrect implications from it. The person who is giving me "psychotherapy" is a NOT a "psychotherapist". She is a "licensed social worker" (LSW).

Therefore, if I now correctly understand what you are asking of me (please confirm this), I will now schedule a session with my LSW, and consult with her about this matter, and ask her to submit an MTR to you. However, that obviously can't happen before Monday. (And, as you know, I won't be reporting to work until this STD business is worked out, for obvious reasons.)

~~Please respond to me if I am now doing things correctly. In return, I will keep you updated promptly when I have something to report.~~

Note: I've scanned the relevant materials I know about, including the document "About Your Benefits - Income & Asset Protection", and I still find no mention of this business about "specialist must be involved if special circumstances are involved". Therefore, I still need you to respond to my question about where this new "rule" comes from.

- Walt

Walter Tuvell—09/08/2011 05:26:08 PM—Kathy and AI - I just noticed something. (I should have checked this before my last note, just minu

From: Walter Tuvell/Marlborough/IBM
To: Kathleen Dean/Fishkill/IBM@IBMUS, AI Pfluger/Fishkill/IBM@IBMUS
Date: 09/08/2011 05:26 PM
Subject: Re: Just checking

Kathy and AI -

I just noticed something. (I should have checked this before my last note, just minutes ago.)

You (Kathy, with AI's acquiescence, by his being CC'd) wrote: "The IBM MTR form mentions psychotherapist to help with acute stress."

That is FALSE. The MTR (which you yourself included in your email) does NOT mention EITHER of the words "psychotherapist" or "acute".

Therefore, you provably misrepresented the MTR, in writing. And hence, your reason for not granting/certifying the MTR is provably FALSE.

Why would you do that? What is going on? I had thought/hoped you were "playing it straight, but this gives me serious reason to question that.

Please explain yourself, in clear language. Promptly.

- Walt

Walter Tuvell—09/08/2011 05:11:38 PM—I don't have a "psychotherapist". Therefore, if I have to get a psychotherapist to examine me, it w

From: Walter Tuvell/Marlborough/IBM
To: Kathleen Dean/Fishkill/IBM@IBMUS
Cc: AI Pfluger/Fishkill/IBM@IBMUS
Date: 09/08/2011 05:11 PM
Subject: Re: Just checking

I don't have a "psychotherapist". Therefore, if I have to get a psychotherapist to examine me, it will take some time (weeks at least), and I obviously can't do that by Monday. Which means, as you know, I'll be forced to enter into an abusive situation.

But, I'm not exactly sure why something like a specialist/psychotherapist is required? (As far as "having sleep studies done" that's obviously not needed. TWO hours of sleep a night certainly qualify as "sleep disorder", you don't need a "sleep study" to prove that.)

As the Complaint materials I've sent you clearly explain, I PASSED-OUT (SYNCOPE) at my last meeting with Dan Feldman (Aug. 3), precisely because of his direct abusive psychological attack. I have every reason to believe that will continue, each/every time I'm in his presence. Consequently, each/every time I'm in Dan's presence, I will end up with the severe psychological/anxiety problems (including sleep disorder) as before.

That (Dan's abuse) is the very reason I'm going through the C&A process. But the C&A process itself is corrupt, as also clearly documented in my Complaint (including Addenda). In particular, the C&A process (Russ Mandel) is requiring me to continue working for Dan, instead of changing that abusive work situation in some way. Obviously, if I do that (return to work under Dan), the above paragraph applies (I'll be attacked again, etc.).

Obviously, my family physician is fully competent to diagnose "syncope from psychological attack, leading to severe anxiety, including its consequences, such as sleep disorder, etc.". A psychotherapist would be inappropriate for that, because syncope is a physical problem, not mental.

If what you're saying is that "the physician filled out the MTR the wrong way, and is needs to filled out (upon consultation with me, of course) in some different way", then I'll be happy to carry that information to my physician. But I'm not sure exactly what I've done wrong, or how to correct it, so could you please elaborate?

Also, you mention that there are certain "rules" about STD, such as family physician vs. specialist. Could you please send me a copy of those rules, so I know how I'm supposed to be doing these things?

In particular, Kathy and Al: The situation for this MTR is the EXACTLY THE SAME as for the first MTR. NOTHING HAD CHANGED (because C&A refuses to change it). SO WHY ARE YOU CHANGING YOUR RULES NOW? Has anybody from C&A or HR (or elsewhere, such as your own management) "gotten to" you? Please answer this question, together with all the others I've asked you here. (I hope there's nothing illicit/illegal going on here, because up to now I really thought you two were "playing it straight" and I really hope you still are.)

Thank you.

- Walt

[Private email, if you want/need it: walt.tuvell@gmail.com.]

Kathleen Dean—09/08/2011 03:43:35 PM—Walter, You are currently STD Certified to be out of work until 09/15/2011. I have received the comp

From: Kathleen Dean/Fishkill/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Al Pfluger/Fishkill/IBM@IBMUS
Date: 09/08/2011 03:43 PM
Subject: Re: Just checking

Walter,

You are currently STD Certified to be out of work until 09/15/2011. I have received the completed IBM MTR Form from your Family Physician dated 09/09/2011.

Since your diagnosis indicates Sleep Disorder and Stress Reaction an IBM MTR Form will need to be completed by a specialist not your family physician.

The IBM MTR form mentions psychotherapist to help with acute stress. Please provide your psychotherapist with a blank IBM MTR form and the IBM Psychiatric Impairment Rating Portion for completion.

Have you had sleep studies performed?

If you have any questions, please do not hesitate to contact me.

Attached is a Medical Treatment Report (MTR) form that is required to be completed by the employee's treating physician in order for IBM to determine eligibility for the IBM Short Term Disability plan or to request Workplace modifications.

Please have your treating physician complete and sign the MTR and fax to the number provided at the bottom of the form (1-919-543-0834). Employee is responsible for any costs associated with the completion of this form, and ensuring its return to IBM IHS (Integrated Health Services).

[attachment "Medical Treatment Report Form.pdf" deleted by Walter Tuvell/Marlborough/IBM]

Informational link regarding the Short Term Disability Plan Process.
<http://w3-01.ibm.com/hr/us/benefits/disability/stdplanworks.html>

Thank you, Kathy

Kathleen A. Dean, R.N. COHN, COHC
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Access Wellness for Life: <https://www.wellnessforlifecenter.com>

Walter Tuvell—09/08/2011 03:18:33 PM---Hi, have you received the MTR from my Dr's office? Last time it didn't go out when it was first supp

From: Walter Tuvell/Marlborough/IBM
To: Kathleen Dean/Fishkill/IBM@IBMUS, Al Pfluger/Fishkill/IBM@IBMUS
Date: 09/08/2011 03:18 PM
Subject: Just checking

Hi, have you received the MTR from my Dr's office?

Last time it didn't go out when it was first supposed to, so I thought I'd check this time.

Thanks.

- Walt

From: Stewart Snyder
To: Kathleen Dean
CC:
BCC:
Sent Date: 2011-09-16 16:14:02:000
Received Date: 2011-09-16 16:14:07:000
Subject: Re: Fw: *IBM Confidential: Walter Tuveill #0G3821
Attachments:

I think that would be best, although I suspect you will be hearing from him before then. If you do just tell him that you are working on it.

Stew

B. Stewart Snyder, III, M.D.
Physician Program Manager
IBM Integrated Health Services
Ph: 919.543.6161 FAX: 919.543.0834
Internet: bssnyder@us.ibm.com

International Business Machines, Inc.
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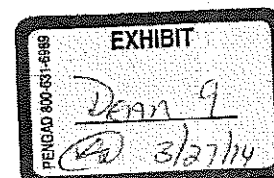
IBM

Kathleen Dean--09/16/2011 11:43:01 AM--Dr. Stew, Shall I wait to respond to the employee after our meeting with HR and team? Kathleen A.

From: Kathleen Dean/Fishkill/IBM
To: Stewart Snyder/Raleigh/IBM@IBMUS
Cc: Al Pfluger/Fishkill/IBM@IBMUS
Date: 09/16/2011 11:43 AM
Subject: Re: Fw: *IBM Confidential: Walter Tuveill #0G3821

Dr. Stew, Shall I wait to respond to the employee after our meeting with HR and team?

Kathleen A. Dean, R.N. COHN, COHC
IBM Health Services Advisor
Integrated Health Services, IBM EFishkill
Phone: (845) 894-9573 or tieline 533-9573
Fax: (845) 892-3226 or tieline 532-3226
email: deanka@us.ibm.com



Stewart Snyder---09/16/2011 09:30:41 AM---Hi Kathy, Well, the "there is nothing wrong with me" was expected. As I said: "Thou dost protestet

From: Stewart Snyder/Raleigh/IBM
To: Kathleen Dean/Fishkill/IBM
Date: 09/16/2011 09:30 AM
Subject: Re: Fw: *IBM Confidential: Walter Tuvell #OG3821

Hi Kathy,

Well, the "there is nothing wrong with me" was expected. As I said: "Thou dost protesteth too much, methinks". I would love to get an expert opinion from a psychiatrist who has read everything Walter has written, because I believe he has a significant personality disorder, but that would be expensive, and would not change how we handled the case.

Tell him I had already looked at his complaint before you sent him your last email, and it doesn't change anything. He has been out for an extended period for a psych problem, and we routinely require such employees to see a psychiatrist at this point, and many such employees also say that their manager is the problem. He will be treated the same way we treat other employees with his type of problem. That is the reason he requested.

It is his choice whether he sees a psychiatrist or not, but we will not support his STD unless he does, and gives us documentation from the psychiatrist.

You can also mention to him that we do not answer for Russ Mandel.

I think we should set up a teleconference with Russ (and whoever else he wants involved), Legal and management to discuss this. I doubt Walter will see a psychiatrist, and I doubt he will return to work. I think that at this point regardless of what IBM does he will likely take legal action against IBM. It is important that we handle his case just like we do all similar cases. You should find out who Legal is, and forward them Walter's complaint and follow-up emails so they can look at them prior to our discussion.

Stew

The truth is the truth, whether you choose to believe it or not.

B. Stewart Snyder, III, M.D.
Physician Program Manager
IBM Integrated Health Services
Ph: 919.543.6161 FAX: 919.543.0834
Internet: bssnyder@us.ibm.com

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Dept. XE6B/Bldg. 205
3039 Cornwallis Road
RTP, NC 27709

The truth is the truth, whether you choose to believe it or not.

IBM

Kathleen Dean--09/16/2011 08:53:36 AM--fyi --- Forwarded by Kathleen Dean/Fishkill/IBM on 09/16/2011 08:57 AM ---

From: Kathleen Dean/Fishkill/IBM
To: Stewart Snyder/Raleigh/IBM@IBMUS
Cc: Al Pfluger/Fishkill/IBM@IBMUS
Date: 09/16/2011 08:53 AM
Subject: Fw: *IBM Confidential: Walter Tuvell #0G3821

fyi

--- Forwarded by Kathleen Dean/Fishkill/IBM on 09/16/2011 08:57 AM ---

From: Walter Tuvell/Marlborough/IBM
To: Kathleen Dean/Fishkill/IBM@IBMUS
Cc: Al Pfluger/Fishkill/IBM@IBMUS
Date: 09/15/2011 05:04 PM
Subject: Re: *IBM Confidential: Walter Tuvell #0G3821

You are joking, right?

The ONLY reason I'm out on STD is that I am being SUBJECTED TO ABUSE AT WORK. There is NOTHING that a psychiatrist can do to "help" me, because THERE IS NOTHING "WRONG" WITH ME. And, the corrupt C&A Program refuses to process ("discuss") my case until AFTER I return to the abusive workplace. The reason this is corrupt is that the C&A Program itself says the C&A process is open to people on STD leave, yet Russell Mandel refuses to progress my C&A complaint for the very reason that I on STD leave. This is intentionally psychologically abusive.

I have already sent you my Complaint (Parts I-II, and Addenda I-II). Please FORWARD those to the IBM Physician you mentioned. (This note authorizes you to do so.) That person MUST read the Complaint (otherwise, they won't be informed). THEN, let me know what he/she says -- WITH REASONS.

- Walter Tuvell

Kathleen Dean--09/15/2011 03:58:16 PM--Walter, Since August 15th, you have been certified on Short Term Disability under the care of your f

From: Kathleen Dean/Fishkill/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Al Pfluger/Fishkill/IBM@IBMUS
Date: 09/15/2011 03:58 PM
Subject: *IBM Confidential: Walter Tuvell #0G3821

Walter,

Since August 15th, you have been certified on Short Term Disability under the care of your family physician. You are currently in ongoing psychotherapy to help address your acute stress and sleep problems. I have approved your STD Disability to October 17th. After consulting with our IBM Physician his recommendation, if you are not able to return to work by October 17th, is to seek a higher level of care from a psychiatrist, because if a person is ill enough that they are out of work for an extended period of time, beyond 6-8 weeks, then they have exceeded the expertise level of a family physician. This is no different than requiring an employee with a back injury that has been out of work for this period of time under the care of a family physician to see a back specialist before we will continue to support absence.

So, in the interest of making sure that you are receiving proper care, we require information from a specialist, to be able to continue to support your absence after October 17th.

Attached is a Medical Treatment Report (MTR) form that is required to be completed by the employee's treating physician in order for IBM to determine eligibility for the IBM Short Term Disability plan or to request Workplace modifications.

Please have your treating physician complete and sign the MTR and fax to the number provided at the bottom of the form (1-919-543-0834). Employee is responsible for any costs associated with the completion of this form, and ensuring its return to IBM IHS (Integrated Health Services).

[attachment "Medical Treatment Report Form.pdf" deleted by Walter Tuvell/Marlborough/IBM]

Informational link regarding the Short Term Disability Plan Process.
<http://w3-01.ibm.com/hr/us/benefits/disability/stdplanworks.html>

Thank you, Kathy

Kathleen A. Dean, R.N. COHN, COHC
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Access Wellness for Life: <https://www.wellnessforlifecenter.com>

From: Fritz Knabe
To: Daniel Feldman
CC:
BCC:
Sent Date: 2011-06-10 15:50:12:000
Received Date: 2011-06-10 15:50:13:000
Subject: Re: FYI
Attachments:

Okay, thanks. He can just give his badge to Sujatha when he is done.

Daniel Feldman---06/10/2011 10:21:55 AM---Embargo is off; I've discussed with both Walt and Sujatha and we'll be meeting to plan the details o

From: Daniel Feldman/Marlborough/IBM
To: Fritz Knabe/Marlborough/IBM@IBMUS
Date: 06/10/2011 10:21 AM
Subject: Re: FYI

Embargo is off; I've discussed with both Walt and Sujatha and we'll be meeting to plan the details of the transition sometime today. Please don't disable Walt's badge for a couple of days; he'll come by sometime soon to clean out his desk.

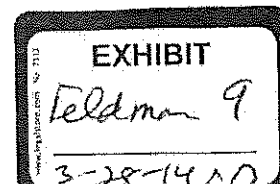
Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone:508 382 8480
E-mail: dfeldman@us.ibm.com

IBM Corporation
11/10/2011 10:21:55 AM
Fritz Knabe
Daniel Feldman
Sujatha
Walt
Embargo is off; I've discussed with both Walt and Sujatha and we'll be meeting to plan the details of the transition sometime today. Please don't disable Walt's badge for a couple of days; he'll come by sometime soon to clean out his desk.

IBM Corporation
11/10/2011 10:21:55 AM
Fritz Knabe
Daniel Feldman
Sujatha
Walt
Embargo is off; I've discussed with both Walt and Sujatha and we'll be meeting to plan the details of the transition sometime today. Please don't disable Walt's badge for a couple of days; he'll come by sometime soon to clean out his desk.

26 Forest St
Marlborough, MA 01752
United States



Fritz Knabe--06/10/2011 09:01:22 AM--Thank you, Dan. I really appreciate your willingness to find a good resolution for this situation. I

From: Fritz Knabe/Marlborough/IBM
To: Daniel Feldman/Marlborough/IBM@IBMUS
Date: 06/10/2011 09:01 AM
Subject: Re: FYI

Thank you, Dan. I really appreciate your willingness to find a good resolution for this situation. I'll send you some notes as mentioned previously.

Daniel Feldman--06/10/2011 08:08:05 AM--Hi, I'm going to go ahead and switch Walt and Sujatha. I've talked to Sujatha and she is happy to h

From: Daniel Feldman/Marlborough/IBM
To: Fritz Knabe/Marlborough/IBM@IBMUS
Date: 06/10/2011 08:08 AM
Subject: FYI

Hi,

I'm going to go ahead and switch Walt and Sujatha. I've talked to Sujatha and she is happy to help. She has some familiarity with scrum based methods and is willing to travel occasionally to Cambridge (particularly outside rush hour). I think it will be reasonable to expect her to attend your iteration planning meetings. I'll talk to her about the idea of both of us spending Thursdays (or every other Thursday) in Cambridge.

Please don't announce any of this in Cambridge until I let you know that I've spoken to Walt. I'll work with Walt and Sujatha on a transition plan and run it by you for review.

Found the following; thought it might help with keeping her plugged into the scrum but don't really know: <http://w3.tap.ibm.com/myTAP/innovation/viewInnovation.wss?assetId=919>.

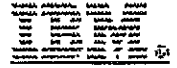
-Dan.

Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture

Software Group, Information Management

Phone: 508 382 8480

E-mail: dfeldman@us.ibm.com



26 Forest St
Marlborough, MA 01752
United States



Re: Fw: Transition of responsibilities 

Walter Tuvell to: Daniel Feldman

06/15/2011 10:12 AM

Cc: Kelli-ann McCabe, Diane Adams

Bcc: walt.tuvell, ilkforms

From: Walter Tuvell/Marlborough/IBM
To: Daniel Feldman/Marlborough/IBM
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS, Diane Adams/Fishkill/IBM@IBMUS
Bcc: walt.tuvell@gmail.com, ilkforms@aol.com
Default custom expiration date: 06/14/2012

Oh Come On.

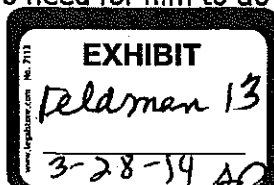
OK, you want a status report, I'll give you a status report. It is identical to Sujatha's. As if you didn't know that was obviously going to be the case, and which is the reason I didn't bother sending you this redundant, useless information. I tried looking for "my own words", but Sujatha's words can't be bettered, and all we're really after here is clear communications, right? Here they are:

- 1) Finished transition of the Block IO tracing project. (Sujatha to Walter)
- 2) Finished transition of the WaltBar performance tool (Walter to Sujatha)

Dan, I'm very sorry to observe you now showing your true colors in this way. As long as you insist on interacting with me in this sort of blatant (not even an attempt at subtlety) snide harassment/retaliation, I might as well bring the following piece of information (below) about this "transition" to the attention of Kelli-ann and the IST. As you very well know (because I've been telling this to you constantly since you hired me in Nov, so you cannot pretend to be unaware), I have had some terrible things inflicted upon me by unscrupulous management in the past, and I've done everything in my power to avoid a repetition of it. But you and Fritz now appear to be on a campaign of actively persecuting me (this email of yours is a sample piece of evidence). I have no choice but to defend myself. Why you're doing this I have no idea (other than your "only caring about the success of Wahoo"). But I certainly hope IBM has the integrity to expose the truth to all. You and Fritz are the ones choosing to go down this path, and I am doing nothing but reacting and upholding my rights under due process.

To Kelli-ann, Diane, IST:

Dan (whether with or without the conspiracy of Fritz, I know not, because they've together kept me in the dark as to the secret meetings they've held, despite my many requests for 3-way meetings) has not only unilaterally forced an adverse job action upon me (details elsewhere), but has done so by replacing me with an employee whose qualifications are far inferior to mine (I have a PhD, she does not, and my work experience is much more extensive and relevant than hers), who is of a different sex than me (I am male, she is female), and who is much younger than me (in particular, I am over 40, she is under). There was no need for him to do this, because he had a



TUVELL000265

viable alternative choice. He could have replaced me with another person in his group (Ashish Deb), who also has a PhD, is male, and is over 40. Note that all other members of the Wahoo team are male, not female, so switching me with Ashish would have made more sense from that point of view too ("equivalence"). Further, switching me and Ashish would have made much more sense from a business point of view, because the work Ashish is doing is much more compatible with my background than Sujatha's work is.

As you will immediately recognize, this (together with the adverse job action on false grounds upon which this "transition" is predicated) states a prima facie case (and even stronger) for discrimination on the grounds of both age and sex, and perhaps even race (I am Caucasian, Sujatha is not, though neither is Ashish).

Daniel Feldman Walt, I do not have the status re... 06/15/2011 07:11:36 AM

From: Daniel Feldman/Marlborough/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS
Date: 06/15/2011 07:11 AM
Subject: Fw: Transition of responsibilities

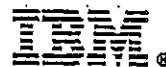
Walt,

I do not have the status report I asked you to provide to me at the end of every business day (see below). While I do have a report from Sujatha, I don't have one from you. Perhaps I was not sufficiently clear. I require a report from each of you daily. In your own words, please detail the transition tasks you complete each day. Please do so until notified that this is no longer necessary. If you believe these instructions are ambiguous or open to interpretation in any way, please seek clarification immediately.

-Dan.

Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone: 508 382 8480
E-mail: dfeldman@us.ibm.com



26 Forest St
Marlborough, MA 01752
United States

----- Forwarded by Daniel Feldman/Marlborough/IBM on 06/15/2011 07:04 AM -----

From: Daniel Feldman/Marlborough/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS, Sujatha Mizar/Marlborough/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS

TUVELL000266

Date: 06/14/2011 08:59 AM
Subject: Transition of responsibilities

Sujatha and Walt,

Please provide me with brief email at the end of every business day detailing the transition tasks you have completed and alerting me to any problems or issues you are encountering.

Thanks!

-Dan.

Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone: 508 382 8480
E-mail: dfeldman@us.ibm.com



26 Forest St
Marlborough, MA 01752
United States

Volume II
Pages 2-1 to 2-197
Exhibits 21 to 29

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----x
WALTER TUVELL,
Plaintiff,

vs.

INTERNATIONAL BUSINESS
MACHINES, INC.,
Defendant.

:
:
:
: Civil Action
: No.
: 13-cv-11292-DJC
:
:
-----x

CONTINUED DEPOSITION OF WALTER E. TUVELL,
JR., a witness called on behalf of the Defendant,
taken pursuant to the Federal Rules of Civil
Procedure, before Alexander K. Loos, Registered
Shorthand Reporter and Notary Public in and for the
Commonwealth of Massachusetts, at the Offices of
Jackson Lewis, P.C., 75 Park Plaza, 4th Floor,
Boston, Massachusetts, on Tuesday, June 24, 2014,
commencing at 10:06 a.m.

PRESENT:

Rodgers, Powers & Schwartz LLP
(By Robert S. Mantell, Esq.)
111 Devonshire Street, 4th Floor
Boston, MA 02109
617.742.7010; Fax 617.742.7225
rmantell@theemploymentlawyers.com
for the Plaintiff.

Jackson Lewis P.C.
(by Joan Ackerstein, Esq.)
75 Park Plaza
Boston, MA 02116
617.367.0025; Fax 617.367.2155
ackerstj@jacksonlewis.com
for the Defendant.

* * * * *

Walter E. Tuvell, Jr., Volume II - June 24, 2014

21

1 those higher notes as I used to. And so I was
2 wondering if my hearing was being diminished.

3 Q. Now, it is the case, isn't it, that when
4 you get upset, sometimes you don't remember
5 precisely what's said to you?

6 MR. MANTELL: Objection.

7 A. It is the case that everyone has that
8 condition.

9 Q. Okay. And so that would include you --

10 A. Yes, it would.

11 Q. -- Mr. Tuvell?

12 A. It certainly would.

13 Q. Were you upset in the meeting on May 17th
14 with Mr. Knabe when he told you he didn't want
15 things in an ASCII graphic?

16 A. Okay. First of all, you're lying. He did
17 not say that. He said nothing about graphic,
18 nothing about ASCII, period. So don't lie to me,
19 Joan.

20 What he said was what I just told you, and
21 I was definitely not upset. If we were in a room --
22 now I'm going to finish this. I took an oath to
23 give the whole truth. This is the truth.

24 We were in a room about this size. He

Walter E. Tuvell, Jr., Volume II - June 24, 2014

22

1 called me from his desk -- from my desk and said,
2 "Walt," blah, blah. He said something. And I said,
3 "What are you talking about?" And he said, "Well,
4 come over here and look."

5 So I went over and looked over his
6 shoulder. He's working on his -- you know, he's got
7 a Mac Air, I think, with a big screen. He said,
8 "Here. Look at this." So I looked. He said, "I
9 want to do some additional analysis on this data
10 that you've produced."

11 There was no ASCII graphics, not my
12 ASCII -- no graphics, nothing. There was columns of
13 data, my data that I produced, sent around to him
14 and everyone else. So he said, "I want to do some
15 additional analysis." And he said, "For that
16 purpose," you know, "I want to get them into a
17 spreadsheet."

18 Now, spreadsheets, such as Excel and
19 others, can be used for at least two things:
20 Graphics and analysis. He was doing analysis,
21 because that's what he told me.

22 So I said, "Okay. Well, for that you want
23 a CSV" -- a comma separated values -- "file." He
24 said -- and so I produced this. I had a program to

Walter E. Tuvell, Jr., Volume II - June 24, 2014

23

1 produce all these numbers, so I said, "Well, I could
2 just change my program so it would give you a CSV if
3 you want." He said, no, I don't have to because he
4 was using an editor called Emacs -- E-m-a-c-s -- and
5 he did a magic keystroke, and it changed it into
6 CSV. Which is fine. That's exactly what I would
7 have done had I been in his position.

8 However, what I was offering to do was to
9 give it to him that way initially. Okay? So he
10 said, "I don't need that," and I said, "Fine."

11 So I said, "What" -- "what analysis are you
12 doing?" He drew me the Post-It note, and he
13 explained it. He said, "working on the fudge factor
14 model" blah, blah, blah.

15 Did I understand it? No, I didn't
16 understand that, that Post-It -- and that's true, I
17 didn't understand his Post-It note because that was
18 gibberish.

19 Q. Okay.

20 A. No, Joan. I'm going to finish.

21 That -- because what he said was his
22 typical hand waving. He wasn't being straight. He
23 accuses me of being elliptical. Well, he was being
24 very elliptical. Everyone knew that Fritz would not

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1 put his plan on paper, basically because it was
2 garbage. Okay? He wouldn't do it. So he waved his
3 hands, drew a bunch of pictures and said that's the
4 analysis he was going to do. It was analysis, not
5 graphics. He said nothing -- zero, zip, nicht,
6 none, nein about graphics.

7 Q. He did, on May 18th, present Excel graphics
8 that he prepared to the group?

9 A. He did.

10 Q. If Fritz was unhappy with your work on
11 Wahoo, if -- W-a-h-o-o-o --

12 A. Two Os at the end, not three.

13 *Q. If Fritz Knabe was disappointed or
14 frustrated with your work in Wahoo, you would agree
15 with me that he had the right to express those
16 concerns to Dan Feldman, didn't he?

17 MR. MANTELL: Objection, speculative.

18 A. So I would say almost anyone would have a
19 right to talk to almost anyone about any topic. So
20 the short answer to your question is yes.

21 But -- so that's the short answer. The
22 longer answer is he should have gotten me involved
23 first. In fact, he agreed to this. Later on -- and
24 I'm talking approximately Monday, the Monday

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1 following Wednesday, June 18th, 2011, I -- I
2 initiated a meeting with him, just the two of us.

3 And, by the way, it is another lie of
4 Fritz's. In some of his notes he says that he
5 initiated this meeting. He is a liar, and I can
6 prove it. I have the e-mail documentation to prove
7 it, but anyway, let me continue.

8 So I initiated the conversation with him.
9 I said, "Fritz, Dan told me that you had a" -- let
10 me see. "Dan told me that you had a problem with me
11 not producing some graphics. What was that about?"

12 And what Fritz said was, "Well, we had that
13 meeting at my desk on Tuesday, the 17th, and" --
14 "and I gave a" -- "expressed a vague desire" -- his
15 exact words, "vague desire" -- "for some Excel
16 graphics." I didn't have that Post-It note in front
17 of me. He didn't mention that Post-It in front
18 of --

19 Q. Mr. Tuvell, I'm going to stop you.

20 MR. MANTELL: No.

21 MS. ACKERSTEIN: I am going --

22 MR. MANTELL: He has to answer.

23 THE WITNESS: I have to give an answer.

24 MS. ACKERSTEIN: He does not. I did not

Walter E. Tuvell, Jr., Volume II - June 24, 2014

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1 do you believe he did that because of your gender?

2 A. All right.

3 Here's why I believe it:

4 I knew Fritz was lying. The question is
5 why would he lie? The obvious way to handle these
6 things in any company in the world -- and that would
7 include IBM -- would be to have a discussion with
8 the employee and, in this case, a three-way
9 discussion between me, my direct solid-line manager,
10 Dan Feldman, and my dotted-line manager, Fritz
11 Knabe. Why wasn't he doing it was my question to
12 myself.

13 My answer to myself was that there must be
14 something bigger at play here. What could that
15 bigger thing be? And my answer to myself was it had
16 to be illegal. What were the illegal things that
17 this could be?

18 And I could think of two: Number one,
19 defamation, but the question there is why
20 defamation? And so that brings me to the real
21 reason, as I've copiously documented. I think it
22 was pretext for discrimination, because that's
23 clearly illegal. And you know what "pretext" means
24 as a term of art in the area of discrimination.

Walter E. Tuvell, Jr., Volume II - June 24, 2014

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1 And I reasserted -- all these things I say
2 about Fritz lying, I reassert they are pretext every
3 single time. So on what basis could I be
4 discriminated against? And I could think of three
5 at that time: Age, sex and race. Later on, as
6 things would develop, I added disability to that.
7 At this point, it was no thought in my mind of
8 disability discrimination or retaliation, nothing to
9 do with disability at this point, but that is my
10 reason.

11 Q. Okay. Mr. Knabe testified, and Dan Feldman
12 testified, that on June 9th, Mr. Knabe told Dan
13 Feldman that he didn't think he could work with you
14 any longer, and he didn't think it was going to work
15 out.

16 You can't see a reason other than something
17 illegal why Mr. Knabe would be frustrated with your
18 performance?

19 A. I cannot. Because, in addition, what did
20 he do on June 9th? He didn't talk to me as he had
21 explicitly agreed earlier. He went behind my back
22 and talked to Dan instead. All this was lies. I
23 can think of no other reason.

24 He is not a stupid man. He's got a Ph.D.

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1 play some Saturday games.

2 Q. "Had a blowup this past weekend"?

3 A. Oh, that sounds like it.

4 Q. "Finally agrees that his emotions are out
5 of control"?

6 A. That sounds like it.

7 Q. Okay. So the blowup you believe is this
8 incident?

9 A. That is what I believe.

10 Q. Okay. And does this have something to do
11 with football?

12 A. Tangentially, yes.

13 Q. Okay. How?

14 A. So very tangential.

15 So put this together with my previous
16 deposition, and you'll recall that we stopped at
17 this gas station. That triggered me. And I was
18 about ready to explode. I hadn't yet exploded. As
19 we left that gas station, the Patriots game was on,
20 and it was turned up one click too loud for Linda.
21 And she reached over and turned it down one click,
22 and I blew up. I hit the dashboard as hard as I
23 could. I hit the roof that we were -- the interior
24 of the roof of the car. I was in the passenger

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1 seat. I hit the -- the door frame on my right, and
2 I yelled as loud as I could almost for as long as I
3 could. I was crazy. I was full-blown crazy. I was
4 very upset and very embarrassed.

5 Q. And were you yelling anything in
6 particular?

7 A. Yes.

8 MR. MANTELL: Was anyone else in the car?

9 THE WITNESS: Suzie was in the car.

10 BY MS. ACKERSTEIN:

11 Q. Okay.

12 A. My daughter.

13 Q. And what were you yelling?

14 A. I was yelling only at Linda, not at Suzie.

15 Basically things like, "Why does everyone
16 have to boss me around? Why do people have to do
17 things to me?" I was, of course, thinking IBM and
18 Dan. There was no reason -- Linda did absolutely
19 nothing wrong. Under normal circumstances I never
20 would have reacted like this. But, as I told you, I
21 was triggered by being that close to Netezza and
22 that gas station. That's what it was.

23 Q. And what kind of a gas station is it?

24 A. Perhaps Mobil. I'm not exactly sure.

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1 race, you also allege that Mr. Feldman discriminated
2 against you.

3 Is that right?

4 A. Yes. But in his case there is the addition
5 of disability discrimination --

6 Q. Okay.

7 A. -- and retaliation.

8 Q. Okay. And why do you believe that
9 Mr. Feldman is discriminating against you based on
10 your disability?

11 A. Well, I think that's pretty obvious. He
12 admits, and I agree, that I told him explicitly
13 about my PTSD on or about May 23rd or 26th of 2011,
14 preceding any of these -- no, not any. It didn't
15 precede the Excel graphics, but it preceded the
16 yelling and everything afterwards. Now, that's
17 explicitly.

18 Implicitly, I had already informed him of
19 PTSD beginning in December of 2010. That
20 implicitness is written in copious detail in all --
21 in some of my IDR complaints, internal dispute
22 resolution. We don't need to get into that, but
23 anyway, he knew. He knew. Yet, knowing that, he
24 retaliated and literally discriminated against me in

Walter E. Tuvell, Jr., Volume II - June 24, 2014

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1 many ways, beginning with the "Dear Dr. Tuvell"
2 letter of June -- Sunday, June the 12th. That was
3 clear retaliation because he knew I had -- well, as
4 he phrased it, "sued a former employer." It was
5 actually taking the former employee to ADR.

6 Q. I didn't ask about retaliation, Mr. Tuvell;
7 I asked about discrimination.

8 A. Discrimination.

9 Q. Do you think when he made the decision to
10 replace you, or to switch assignments between you
11 and Sujatha Mizar, that he did that because you
12 suffer from a disability?

13 A. Yes.

14 Q. And he made that decision on June 9th, or
15 June 10th, I guess.

16 What leads you to believe that on June 10th
17 he decided to switch assignments between you and
18 Sujatha Mizar because of your disability?

19 A. Because on June -- let me think -- 13th --
20 13th, which was a Monday, early in the morning, he
21 wrote an e-mail to several others, including --
22 well, actually I think the exact two addressees were
23 John Metzger and Kelly-ann McCabe. And he said in
24 this that he knew that I had PTSD because I had so

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1 informed him earlier in May -- what is it, 23 to 26,
2 somewhere around there -- and that basically he
3 wanted me fired. He was afraid of me. He was using
4 stigmatization and stereotyping of PTSD, and he
5 was -- he explicitly said so at his deposition. He
6 was "advocating" was his word to have me fired on
7 the 13th.

8 Now, it is -- I agree the 13th was later
9 than the 10th, but he was referring to events that
10 he knew previously about my PTSD on May 23rd or
11 26th. That's -- that's a pretty clear conclusion in
12 my mind.

13 Q. You were not fired.

14 A. Sorry.. Transferred, demoted. My mistake.

15 Q. Okay. You also wanted Mr. Tuvell (sic)
16 fired, and you also said you feared him, and you
17 also said you didn't want to be alone with him, but
18 you're not discriminating against him; is that
19 right?

20 A. Well, you misspoke there. You said I
21 wanted Mr. Tuvell fired. I think you meant
22 Mr. Feldman.

23 Q. Thank you. So let me rephrase it.

24 You wanted Mr. Feldman fired; you didn't

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1 want to be alone with him; you feared him. But you
2 had those feelings and you were not discriminating?

3 MR. MANTELL: Objection.

4 Q. Is that correct?

5 A. I was absolutely not discriminating. I
6 have no concept that Dan has any cognizable
7 disability. He knew for a fact I had PTSD, because
8 I told him so, and he said I told him so, and he
9 never disputed it.

10 Q. Okay. So you're saying that on June 10th
11 he made a decision to switch you with Ms. Mizar
12 based on PTSD, and your proof is that several days
13 later he suggested he was concerned about you
14 because of that condition; is that it?

15 A. Well --

16 MR. MANTELL: Objection.

17 A. -- you forgot to say other types of
18 discrimination, such as age, sex and race, all of
19 which come into play here because he was disparate
20 to me with respect to all of these conditions.

21 Q. Did it ever occur to you that Mr. Feldman
22 was trying to help you by putting you in a different
23 role with someone who -- in a place where you might
24 be successful?

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1 A. No. That never occurred to me. If he
2 wanted to help me, he would have had the three-way
3 meeting, as I suggested, and as he had previously
4 granted me a three-way meeting with Fritz for this
5 type of personnel issue. He discriminated against
6 me by refusing me the three-way meetings immediately
7 after he knew I had PTSD.

8 Q. If you had had a three-way meeting with
9 Mr. -- Mr. Knabe and Mr. Feldman, you would have
10 adhered to your position that Mr. Knabe was wrong,
11 wouldn't you?

12 A. Well, now wait a minute. If we had had a
13 three-way meeting --

14 Q. Uh-huh.

15 A. -- and we had had an honest discussion, and
16 somehow this had gotten cleared up about -- I'm
17 assuming you're referring to things like the Excel
18 graphics and the yelling episode. If this had
19 gotten cleared up in a three-way meeting, of course
20 I would not have adhered to what now I would have
21 known would have been an incorrect conclusion.
22 Obviously not.

23 But going into that meeting, that was
24 certainly my position. It certainly would have been

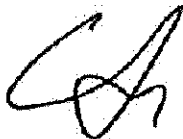
1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Alexander K. Loos, RPR and Notary Public in
4 and for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 24th day of
6 June, 2014, at 10:06 a.m., the person hereinbefore
7 named, who was by me duly sworn to testify to the
8 truth and nothing but the truth of his knowledge
9 touching and concerning the matters in controversy
10 in this cause; that he was thereupon examined upon
11 his oath, and his examination reduced to typewriting
12 under my direction; and that the deposition is a
13 true record of the testimony given by the witness.

14 I further certify that I am neither attorney or
15 counsel for, nor related to or employed by, any
16 attorney or counsel employed by the parties hereto
17 or financially interested in the action.

18 In witness whereof, I have hereunto set my hand
19 and affixed my notarial seal this 5th day of July,
20 2014.

21 

22 Notary Public

23 Commission expires May 21, 2021
24



Re: Transition status - 06/14/2011

Walter Tuvell to: Daniel Feldman

06/15/2011 01:23 PM

Cc: Kelli-ann McCabe, Diane Adams

Bcc: walt.tuvell, llkforms

From: Walter Tuvell/Marlborough/IBM
 To: Daniel Feldman/Marlborough/IBM@IBMUS
 Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS, Diane Adams/Fishkill/IBM@IBMUS
 Bcc: walt.tuvell@gmail.com, llkforms@aol.com
 Default custom expiration date: 06/14/2012

Oh, hey Dan, I just noticed that in that chain of messages you sent out this morning about "requiring" a status report from me individually in my own words, you neglected to include the most important item: Sujatha's status report sent to you yesterday, with me copied, containing our joint status, and requesting me to add anything she might have forgotten.

This proves you had indeed been adequately updated about my status (by my not "adding anything"). Noting, by the way, that your original request for status update did not say anything about "requiring" individual notes from Sujatha and myself, nor did it require "our own words" individually.

Therefore I'm forwarding Sujatha's note here. For I'm sure you wouldn't want anyone to think you'd intentionally suppress relevant facts. Would you?

Sujatha Mizar Hi Dan, Here is the transition stat... 06/14/2011 05:14:48 PM

From: Sujatha Mizar/Marlborough/IBM
 To: Daniel Feldman/Marlborough/IBM@IBMUS, Walter Tuvell/Marlborough/IBM@IBMUS
 Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS
 Date: 06/14/2011 05:14 PM
 Subject: Transition status - 06/14/2011

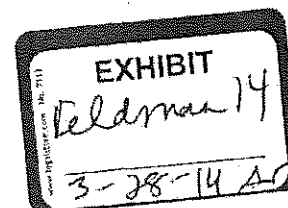
Hi Dan,

Here is the transition status so far:

- 1) Finished transition of the Block IO tracing project. (Sujatha to Walter)
- 2) Finished transition of the WaltBar performance tool (Walter to Sujatha)

Walt- please feel free to add anything I might have forgotten.

Thanks!
-Sujatha



TUVELL000268

From: Sujatha Mizar
To: Daniel Feldman
CC: Kelli-ann McCabe
BCC:
Sent Date: 2011-06-17 21:01:28:000
Received Date: 2011-06-17 21:06:30:000
Subject: Transition status - 06/16/2011 and 06/17/2011
Attachments:

Hi Dan,

Here is my transition status for the last 2 days:

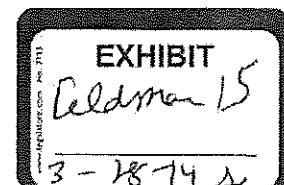
06/16/2011:

- 1) Attended the Wahoo Iteration-18 retrospective meeting.
- 2) Attended the Wahoo Iteration-19 planning meeting.
- 3) Discussed and agreed upon my task list for Iteration-19.
- 4) Started reading up on the various Wahoo specific documentation available on Sharepoint.

06/17/2011:

- 1) Fixed an issue with EPOCH_TS in the Wahoo WaltBar performance testing harness.
- 2) Transitioned the Twinfin systems that I owned to Walt (NZ80533 and NZ80748)
- 3) Ramping up on the Wahoo WaltBar performance testing harness implementation.
- 4) Started the transition of the EMU FPGA Statistics collection project to Walt. Sent him an email with detailed information about the project and the current process of collecting the statistics. I expect to complete this transition early next week.

Thanks!
-Sujatha



From: Daniel Feldman
To:
CC:
BCC:
Sent Date: 2011-07-26 11:45:55:000
Received Date:
Subject: Walter Tuvell
Start Date: 2011-07-27T14:30:00.000
End Date: 2011-07-27T15:00:00.000
Appointment Type: Invitation
Location: Diane's office
Notice Type: [Not Available]
Attachments:

Hi, Diane,

If you're not in Marlborough today, let me know a number and I'll call you.

Below is a series of emails between Walt and me. I would like to issue him the formal warning letter when he returns on Monday; I believe his final "retraction" of the unasked for apology that he sent subsequent to an informal alert that he was straying from acceptable behavior is unprofessional and disruptive. I'd like to discuss it with you before proceeding.

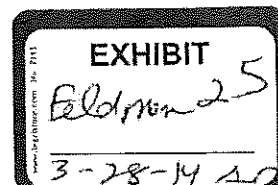
Here are the emails (in roughly chronological order:

From: Walter Tuvell/Marlborough/IBM
To: Daniel Feldman/Marlborough/IBM@IBMUS, Garth Dickie/Marlborough/IBM@IBMUS
Date: 07/06/2011 09:27 PM
Subject: Updated wiki

Bearing in mind the agreement to use "I-statements" (as opposed to accusing the receiver of mis-reception):

My use of the word "lazy" in this context was intended to be jocular ("clearly", I had thought, apparently wrongly), and never in my wildest dreams did I ever think it could/would be interpreted as offensive. So I will search harder for less ambiguous/offensive wording. And of course I'll apologize to Garth (as I've always done whenever it's come to my attention that I may have done something unintentionally offensive).

Thank you for the feedback.



Daniel Feldman--07/11/2011 07:33:21 AM--Walt, Thanks for getting this taken care of before the start of your time off; I do really apprecia

From: Daniel Feldman/Marlborough/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Date: 07/11/2011 07:33 AM
Subject: Re: Updated wiki

Walt,

Thanks for getting this taken care of before the start of your time off; I do really appreciate it.

Under the heading of helping you with your communication style, introducing the link to the wiki page as appropriate for someone "lazy" is the sort of thing you want to avoid. In my experience, busy and lazy are two different things and both are plausible explanations for why someone would not want to spend time searching the wiki. Why not give us (me and Garth, the addressees on your email) the benefit of the doubt?

-Dan.

Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone:508 382 8480
E-mail: dfeldman@us.ibm.com

26 Forest St
Marlborough, MA 01752
United States

Walter Tuvell—07/06/2011 09:27:44 PM—The wiki is updated with all the stuff we talked about, including script tarball, graphs, and pointer

From: Walter Tuvell/Marlborough/IBM
To: Daniel Feldman/Marlborough/IBM@IBMUS, Garth Dickie/Marlborough/IBM@IBMUS
Date: 07/06/2011 09:27 PM
Subject: Updated wiki

The wiki is updated with all the stuff we talked about, including script tarball, graphs, and pointer to data tarballs on perfsnap1.

You can easily find it by searching the wiki for "blktrace", or if you're lazy you can just click this link: <http://wiki2.netezza.com:8080/display/Perf/Blktrace%2C+Blkparse%2C+Btt>.

Cheers.

- Walt

From:Walter Tuvell/Marlborough/IBM

To:Daniel Feldman/Marlborough/IBM@IBMUS, Garth Dickie/Marlborough/IBM@IBMUS

Gentleman, it has come to my attention that my use of the word "lazy" in the enclosed note might be interpreted in a way I did not intend. I intended it as just a jocular throw-off, such as might typically be accompanied by a friendly/collegial smile/giggle if in-person, but without body-language could perhaps be thought to be derogatory. Please believe my intent was innocent, and going forward I hope to achieve a level of easy familiarity with you such that this sort of perhaps-over-scrupulous care in wording should not be necessary in future.

In other words: my apologies for not making sure my intentions were clear (the fault perhaps being that you and I may not yet share a sufficiently solid working relationship). And, if in future I ever seem to be speaking in a manner that might offend, or that may seem inconsistent with what you think is a good professional/personal style, I'd truly appreciate a comment, because I don't foresee that ever being my intent.

Sorry again.

- Walt

From: Daniel Feldman/Marlborough/IBM

To: Walter Tuvell/Marlborough/IBM

Thanks for taking care of this.

Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

From: Walter Tuvell/Marlborough/IBM

To: Garth Dickie/Marlborough/IBM@IBMUS, Daniel Feldman/Marlborough/IBM@IBMUS

Regarding that note I sent you two about "apologizing" for using the word "lazy", after someone brought it to my attention:

I just now happened to trip upon the attached old email of mine. It shows that I myself value "laziness" as a virtue under the right circumstances (e.g., when it doesn't interfere with advancement of skills, etc.).

And then I remembered, too, that I'd read similar comments in the programming literature (not talking about "lazy vs. eager evaluation", of course). So I looked it up: It's a famous encomium of Larry Wall's, in his Programming Perl book (yes, I have the 3rd ed., and I've read it and used perl), where laziness is lauded as a prime virtue of programmers (as it should be)! Also discussed many times in many other places, see for example http://en.wikipedia.org/wiki/Larry_Wall#Virtues_of_a_programmer.

I trust this puts this (non-)issue to rest? Obviously no apology was necessary, but I wasn't able to overcome my low-self-esteem barrier to see it at the time. So: Apologies for the apology! :-)

BTW, I'm still on medical leave this week, then vacation next week, returning to Marl on Mon, Aug 1,

presumably to continue my mission of trying to prove myself incorrect about thinking Bktrace/Bkparse/Btt won't lead us to some performance insights/improvements. See you then!

- Walt

— Forwarded by Walter Tuvell/Marlborough/IBM on 07/20/2011 10:46 AM —

From: Walter Tuvell/Marlborough/IBM
To: Jerrold Richard Title/Cambridge/IBM@IBMUS
Cc: Devesh Agrawal/Marlborough/IBM@IBMUS
Date: 03/16/2011 10:56 AM
Subject: Re: Wahoobox ...

That would be great, because I haven't done a build since my first month here, and I've have to review my notes about how to do it. I'd also have to ask how things have changed since then, and how to configure core affinity and number of slices, things of that nature. You guys are always helpful of course, and it's not rocket science, but the laziest path is always the best!

BTW, Rich, I need the fixes Devesh checked in yesterday (otherwise TPC-DS database creation crashed), would that be in your kit?



Return to work

Daniel Feldman to: Walter Tuvell

11/23/2011 06:59 AM

From: Daniel Feldman/Marlborough/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Default custom expiration date: 11/22/2012

History: This message has been forwarded.

Walt:

It is my understanding that you have decided to accept IBM's standing offer to discuss potential reasonable accommodations supporting your return to work. As you know, you are presently certified for Short Term Disability (STD) until December 19, 2011. If you would like, you can conclude your STD period early and return to work next week. Or, you can continue to remain on STD until December 19 and return to work at that time.

As previously stated, IBM does not consider changing your management team to be a reasonable accommodation and you therefore will continue to report to me and remain in your current position if you return to work. As you know, as your manager it is my responsibility to work directly with the employees who report to me to ensure they are meeting their job requirements and performing to the standards expected of IBM employees. If you would like to discuss more specific proposals about structuring your work as possible reasonable accommodations, please let me know and either we can discuss or, if appropriate, we can engage HR or Integrated Health Services (IHS). If you are interested in exploring other positions through Global Opportunity Marketplace, Diane Adams from Human Resources can help with any questions you have about using that tool and applying for open opportunities.

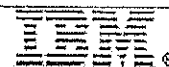
Please note that if you choose not to return to work, you have the option of seeking continued certification of Short Term Disability beyond your current December 19 certification date. If you would like to pursue this route, please follow the IHS process of submitting an MTR which provides the appropriate medical support for STD eligibility.

Please let me know if you have any questions.

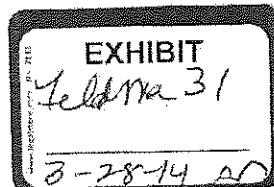
-Dan.

Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone: 508 382 8480
E-mail: dfeldman@us.ibm.com



26 Forest St
Marlborough, MA 01752
United States



TUVELL000974



Fw: Your two requests

Daniel Feldman to: Walter Tuvell

Cc: Diane Adams

12/16/2011 01:36 PM

Default custom expiration date: 12/15/2012

History: This message has been forwarded.

Walt,

It is against company policy for you, while you are on STD leave, to use vacation time. The full statement is here: [AYB: Work and Personal Life Integration](#) document:

2.2.5 Holidays and Illness or Injury During Vacation

When an IBM holiday is observed during your vacation, that day is considered a holiday rather than a vacation day.

If you are receiving benefits under the IBM Short-Term Disability Income Plan, you cannot substitute vacation time for STD time. However vacation benefits for employees who become sick or injured during vacation will be handled on an individual basis by their manager.

As for your email about systems access, since you continue to be on STD and therefore are not working, there is not a business need for you to have access to Netezza-specific systems. If you return and start working in your prior role where systems access is warranted, it will be restored.

Best Regards,

-Dan.

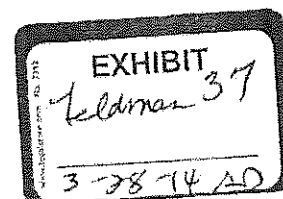
Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone: 508.382.8480

E-mail: dfeldman@us.ibm.com



28 Forest St
Marlborough, MA 01752
United States



TUVELL001523

Next Steps

Subject: Next Steps
From: Daniel Feldman <dfeldman@us.ibm.com>
Date: 05/17/2012 04:59 PM
To: Walt Tuvell <walt.tuvell@gmail.com>

Walt,

This is to let you know that your employment with IBM will be terminated effective May 17, 2012. While you have denied working for EMC and said that you could not explain the reason your LinkedIn page indicated you were consulting for EMC for the past five years, you also acknowledged that you currently have other employment in the technology industry. Since you have been unwilling to date to advise IBM of where you currently are employed, despite repeated requests, the decision has been made to terminate your employment.

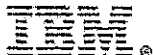
We are going to send a courier to pick up your laptop. Please advise a day and timeframe for the courier to pick up your lap top in the next three business days. Please do not delete any information from the laptop, which is consistent with your obligations under the Agreement Regarding Confidential Information and Other Matters you signed at the start of your IBM employment. Please be sure to include a hard copy list of all passwords necessary to access all the contents of the laptop in the package with the laptop.

Next week, you will receive the IBM standard separation paperwork for you to complete. Please do so and promptly return the signed forms to me. The forms are the IBM Statement of Understanding Form and the Employee & Manager Checklist of Financial Obligations/Property Form.

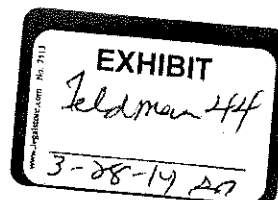
-Dan.

Daniel J. Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone: 508 382 8480
E-mail: dfeldman@us.ibm.com



26 Forest St
Marlborough, MA 01752
United States



IBM
MEDICAL TREATMENT REPORT (MTR) FORM
IBM CONFIDENTIAL WHEN COMPLETED

TO BE COMPLETED BY EMPLOYEE:

Employee Name: Walter Tuwell Serial # 093821 Division Netesse
Date of Birth: 6/16/67 Job Assignment: Design Services Architect
Employee is responsible for any costs associated with the completion of this form, and for ensuring its return to IBM IHS (Integrated Health Services).
I authorize my health care provider (print name) Stephanie Ross, LICSW to complete this form and to discuss this information with an IBM nurse and/or physician.
Employee Signature: W. Tuwell Date: 10/16/11

TO BE COMPLETED BY THE HEALTH CARE PROVIDER:

I. DIAGNOSIS(ES) & ICD9 CODE(S) (if this case involves a mental health issue, complete page two also): Acute stress reaction 308.3 Adjustment Disorder w/ mixed anxiety + depression 309.4
EDC if pregnancy: _____

II. DETAILED TREATMENT PLAN: (medications/dosages, tests, lab studies, referrals, treatment modalities, surgery/dates, etc.):
Medication by Middlesex Family Practice weekly psychotherapy to reduce stress symptoms, continue to evaluate, increase coping strategies, give support
Date of Next Appt. 10/18/11

III. WORK ABILITY (Modified duty is available in most cases.)

Is the employee totally impaired for work? Yes No _____ Estimated Return to Work Date: _____

(Fill out either "A" or "B" below as appropriate, but not both)

A. If totally impaired, give date total impairment began: 8/15/11 and explain in functional terms why the employee is unable to work: Ongoing acute stress symptoms especially regarding retaliation following sudden demotion without cause. Disruption of sleep eating symptoms of helplessness + anxiety.

B. If NOT totally impaired, can the employee work with temporary modifications? Yes _____ No
1.) If yes: give start date of modifications: _____ Estimated end date of modifications: _____
Specify workplace modifications requested: _____

2.) If no: explain in functional terms why the employee is unable to work with modifications: Without safe resolution of current hostile work environment without fear of reprisals... symptoms will persist.

IV. TREATING HEALTH CARE PROVIDER INFORMATION: (NOTE: This is a legal document. Please sign and date it)

Name (please print): Stephanie Ross LICSW Specialty: Psychotherapist
Signature: Stephanie Ross Date: 10/12/11
Address: 742 Massachusetts Ave Arlington MA 02476
Phone Number: 781-646-6640 Fax Number: _____

When completed and signed by health care provider, fax to 919-543-0834 (IBM Integrated Health Services Center), or for assistance call 1-888-553-5752 option #2.

INCOMPLETE FORMS, INCLUDING THOSE NOT SIGNED AND DATED, WILL NOT BE PROCESSED, AND WILL BE RETURNED TO THE HEALTH CARE PROVIDER BEFORE DETERMINATION OF BENEFITS CAN BE MADE.



IBM MEDICAL TREATMENT REPORT - PSYCHIATRIC IMPAIRMENT RATING PORTION

(Only fill out this section if this case involves a psychiatric issue)

Employee Name: Walter Tawell Serial Number: 063821

I. LEVELS OF IMPAIRMENT: Please use the following rating numbers to specify the degree of impairment for each area of function noted in section II.

Rating Impairment:

- 0 No Impairment
- 1 Minimal Impairment
- 2 Mild Impairment
- 3 Moderate Impairment
- 4 Serious Impairment
- 5 Severe Impairment

II. AREAS OF FUNCTION Circle the numbers that describe the patients current condition, using the table above as a guide.

1. Activities of Daily Living

- ① 2 3 4 5 Self care and hygiene (dressing, bathing, eating, cooking)
- ① 1 2 3 4 5 Normal living postures/ambulation (sitting, lying, walking)
- ① 1 2 3 4 5 Travel (driving, riding, flying)
- ① 2 3 4 5 Non specialized hand activities (grasping, lifting, tactile discrimination)
- 0 1 2 3 4 5 Sleep (restful sleep pattern)
- 0 1 2 3 4 5 Social and recreational activities (consider pre-illness activities of the patient)

2. Social Functioning

- 0 1 2 3 4 5 Get along with others without behavioral extremes
- 0 1 2 3 4 5 Initiate social contacts, negotiate and compromise
- 0 1 2 3 4 5 Communicate clearly and effectively with others
- 0 1 2 3 4 5 Interact and actively participate in group activities

3. Thinking, Concentration, Persistence and Pace

- ① 1 2 3 4 5 Comprehend/follow simple commands
- ① 1 2 3 4 5 Apply common sense to carry out a task
- ① 1 2 3 4 5 Ask simple questions, request assistance when needed
- ① 1 2 3 4 5 Perform simple, routine, repetitive tasks
- ① 1 2 3 4 5 Ability to abstract or understand concepts
- 0 1 2 3 4 5 Maintain attention, concentration on a specific task and complete in a timely manner
- ① 1 2 3 4 5 Memory, immediate and remote
- 0 1 2 3 4 5 Judgment
- ① 1 2 3 4 5 Problem solving and conceptual reasoning ability
- 0 1 2 3 4 5 Perform daily tasks (including work) the patient performed prior to the injury or illness at a reasonable pace
- ① 1 2 3 4 5 Ability to initiate decisions and perform planned action

4. Adaptation to Stress

- ① 1 2 3 4 5 Perform activities on schedule, be punctual
- 0 1 2 3 4 5 Adapt to limits or standards
- 0 1 2 3 4 5 Manage conflicts with others - negotiate, compromise
- 0 1 2 3 4 5 Set realistic goals, has good autonomous judgment

Overall Impairment Rating (0 to 5): 3-4 GAR: _____
Health Care Provider's Signature: [Signature] Specialty: Psychotherapist
M.S.W.

IBM
MEDICAL TREATMENT REPORT (MTR) FORM
IBM CONFIDENTIAL WHEN COMPLETED

TO BE COMPLETED BY EMPLOYEE:

Employee Name: Walter Tubell Serial # 663821 Division Waterza
Date of Birth: 6/19/47 Job Assignment: Palmer Architect
Employee is responsible for any costs associated with the completion of this form, and for ensuring its return to IBM IHS (Integrated Health Services).
I authorize my health care provider (print name) Stephanie Ross, LICSW to complete this form and to discuss this information with an IBM nurse and/or physician.
Employee Signature: W E Tubell Date: 11/4/2011

TO BE COMPLETED BY THE HEALTH CARE PROVIDER:

I. DIAGNOSIS(ES) & ICD9 CODE(S) (if this case involves a mental health issue, complete page two also): Post traumatic stress disorder 309.81

EDC if pregnancy: _____

II. DETAILED TREATMENT PLAN: (medications/dosages, tests, lab studies, referrals, treatment modalities, surgery/dates, etc.):

Weekly psychotherapy for reduction of stress symptoms, increase positive coping strategies, give support to individual as needed
Date of Next Appt. 11/9/11

III. WORK ABILITY (Modified duty is available in most cases.)

Is the employee totally impaired for work? Yes No Estimated Return to Work Date: _____

(Fill out either "A" or "B" below as appropriate, but not both)

A. If totally impaired, give date total impairment began: 8/15/11 and explain in functional terms why the employee is unable to work: It continues to experience intense triggering of symptoms with any reference to work environment + incident of demotion + lack of investigation. Symptoms of high reactivity, anxiety and fear resume easily.
B. If NOT totally impaired, can the employee work with temporary modifications? Yes No
1.) If yes: give start date of modifications: _____ Estimated end date of modifications: _____
Specify workplace modifications requested: _____
2.) If no: explain in functional terms why the employee is unable to work with modifications: _____

IV. TREATING HEALTH CARE PROVIDER INFORMATION: (NOTE: This is a legal document. Please sign and date it.)

Name (please print): Stephanie Ross LICSW Specialty: Psychotherapist
Signature: Stephanie Ross Date: 11/3/11
Address: 792 Massachusetts Ave Arlington MA 02476
Phone Number: 781-451-6640 Fax Number: _____

When completed and signed by health care provider, fax to 919-543-0834 (IBM Integrated Health Services Center), or for assistance call 1-888-553-5752 option #2.

INCOMPLETE FORMS, INCLUDING THOSE NOT SIGNED AND DATED, WILL NOT BE PROCESSED, AND WILL BE RETURNED TO THE HEALTH CARE PROVIDER BEFORE DETERMINATION OF BENEFITS CAN BE MADE.



IBM MEDICAL TREATMENT REPORT - PSYCHIATRIC IMPAIRMENT RATING PORTION

(Only fill out this section if this case involves a psychiatric issue)

Employee Name: Walter Tunell Serial Number: 63821

I. LEVELS OF IMPAIRMENT: Please use the following rating numbers to specify the degree of impairment for each area of function noted in section II.

Rating Impairment:

- 0 No Impairment
- 1 Minimal Impairment
- 2 Mild Impairment
- 3 Moderate Impairment
- 4 Serious Impairment
- 5 Severe Impairment

II. AREAS OF FUNCTION Circle the numbers that describe the patients current condition, using the table above as a guide.

1. Activities of Daily Living

- 0 1 2 3 4 5 Self care and hygiene (dressing, bathing, eating, cooking)
- 0 1 2 3 4 5 Normal living postures/ambulation (sitting, lying, walking)
- 0 1 2 3 4 5 Travel (driving, riding, flying)
- 0 1 2 3 4 5 Non specialized hand activities (grasping, lifting, tactile discrimination)
- 0 1 2 3 4 5 Sleep (restful sleep pattern)
- 0 1 2 3 4 5 Social and recreational activities (consider pre-illness activities of the patient)

2. Social Functioning

- 0 1 2 3 4 5 Get along with others without behavioral extremes
- 0 1 2 3 4 5 Initiate social contacts, negotiate and compromise
- 0 1 2 3 4 5 Communicate clearly and effectively with others
- 0 1 2 3 4 5 Interact and actively participate in group activities

3. Thinking, Concentration, Persistence and Pace

- 0 1 2 3 4 5 Comprehend/follow simple commands
- 0 1 2 3 4 5 Apply common sense to carry out a task
- 0 1 2 3 4 5 Ask simple questions, request assistance when needed
- 0 1 2 3 4 5 Perform simple, routine, repetitive tasks
- 0 1 2 3 4 5 Ability to abstract or understand concepts
- 0 1 2 3 4 5 Maintain attention, concentration on a specific task and complete in a timely manner
- 0 1 2 3 4 5 Memory, immediate and remote
- 0 1 2 3 4 5 Judgment
- 0 1 2 3 4 5 Problem solving and conceptual reasoning ability
- 0 1 2 3 4 5 Perform daily tasks (including work) the patient performed prior to the injury or illness at a reasonable pace
- 0 1 2 3 4 5 Ability to initiate decisions and perform planned action

4. Adaptation to Stress

- 0 1 2 3 4 5 Perform activities on schedule, be punctual
- 0 1 2 3 4 5 Adapt to limits or standards
- 0 1 2 3 4 5 Manage conflicts with others - negotiate, compromise
- 0 1 2 3 4 5 Set realistic goals, has good autonomous judgment

Overall Impairment Rating (0 to 5): 3-4 GAF: _____
 Health Care Provider's Signature: [Signature] Specialty: Psychologist

IBM
MEDICAL TREATMENT REPORT (MTR) FORM
IBM CONFIDENTIAL, WHEN COMPLETED

TO BE COMPLETED BY EMPLOYEE:

Employee Name: Walter Tuvel Serial # 063821 Division Netezza
Date of Birth: 6/19/47 Job Assignment: Performance Analyst
Employee is responsible for any costs associated with the completion of this form, and for ensuring its return to IBM IHS (Integrated Health Services).
I authorize my health care provider (print name) Stephanie Ross, LICSW to complete this form and to discuss this information with an IBM nurse and/or physician.
Employee Signature: WETuvel Date: 12/16/11

TO BE COMPLETED BY THE HEALTH CARE PROVIDER:

I. DIAGNOSIS(ES) & ICD9 CODE(S) (If this case involves a mental health issue, complete page two also): 309.81

EDC if pregnancy: _____

II. DETAILED TREATMENT PLAN: (medications/dosages, tests, lab studies, referrals, treatment modalities, surgery/dates, etc.):

Weekly psychotherapy for reduction of stress symptoms, increase positive coping strategies, give support as needed to individual, couple
Date of Next Appt. 12/20/11

III. WORK ABILITY (Modified duty is available in most cases.)

Is the employee totally impaired for work? Yes No Estimated Return to Work Date: _____
For current job assignment.

(Fill out either "A" or "B" below as appropriate, but not both)

A. If totally impaired, give date total impairment began: 8/15/11 and explain in functional terms why the employee is unable to work: Pr. continues to experience extreme triggering regarding workplace previously assigned.

B. If NOT totally impaired, can the employee work with temporary modifications? Yes No

1.) If yes: give start date of modifications: _____ Estimated and date of modifications: _____
Specify workplace modifications requested: Only modification that would be possible is a change of supervisor + setting.

2.) If no: explain in functional terms why the employee is unable to work with modifications: Unable to return to previous setting by current supervisor + setting - PTSD symptoms exacerbate immediately

IV. TREATING HEALTH CARE PROVIDER INFORMATION: (NOTE: This is a legal document. Please sign and date it.)

Name (please print): Stephanie Ross LICSW Specialty: Psychotherapist
Signature: Stephanie Ross Date: 12/19/11
Address: 792 Massachusetts Ave. Arlington MA 02476
Phone Number: 781-646-6640 Fax Number: _____

When completed and signed by health care provider, fax to 919-543-0834 (IBM Integrated Health Services Center), or for assistance call 1-888-553-5752 option #2.

INCOMPLETE FORMS, INCLUDING THOSE NOT SIGNED AND DATED, WILL NOT BE PROCESSED, AND WILL BE RETURNED TO THE HEALTH CARE PROVIDER BEFORE DETERMINATION OF BENEFITS CAN BE MADE.



IBM MEDICAL TREATMENT REPORT – PSYCHIATRIC IMPAIRMENT RATING PORTION

(Only fill out this section if this case involves a psychiatric issue)

Employee Name: Walter Towell Serial Number: 063821

I. LEVELS OF IMPAIRMENT: Please use the following rating numbers to specify the degree of impairment for each area of function noted in section II.

Rating Impairment:

- 0 No Impairment
- 1 Minimal Impairment
- 2 Mild Impairment
- 3 Moderate Impairment
- 4 Serious Impairment
- 5 Severe Impairment

II. AREAS OF FUNCTION Circle the numbers that describe the patients current condition, using the table above as a guide.

1. Activities of Daily Living

- 0 1 2 3 4 5 Self care and hygiene (dressing, bathing, eating, cooking)
- 0 1 2 3 4 5 Normal living postures/ambulation (sitting, lying, walking)
- 0 1 2 3 4 5 Travel (driving, riding, flying)
- 0 1 2 3 4 5 Non specialized hand activities (grasping, lifting, tactile discrimination)
- 0 1 2 3 4 5 Sleep (restful sleep pattern)
- 0 1 2 3 4 5 Social and recreational activities (consider pre-illness activities of the patient)

2. Social Functioning

- 0 1 2 3 4 5 Get along with others without behavioral extremes
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- 0 1 2 3 4 5 Communicate clearly and effectively with others
- 0 1 2 3 4 5 Interact and actively participate in group activities

3. Thinking, Concentration, Persistence and Pace

- 0 1 2 3 4 5 Comprehend/follow simple commands
- 0 1 2 3 4 5 Apply common sense to carry out a task
- 0 1 2 3 4 5 Ask simple questions, request assistance when needed
- 0 1 2 3 4 5 Perform simple, routine, repetitive tasks
- 0 1 2 3 4 5 Ability to abstract or understand concepts
- 0 1 2 3 4 5 Maintain attention, concentration on a specific task and complete in a timely manner
- 0 1 2 3 4 5 Memory, immediate and remote
- 0 1 2 3 4 5 Judgment
- 0 1 2 3 4 5 Problem solving and conceptual reasoning ability
- 0 1 2 3 4 5 Perform daily tasks (including work) the patient performed prior to the injury or illness at a reasonable pace
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4. Adaptation to Stress

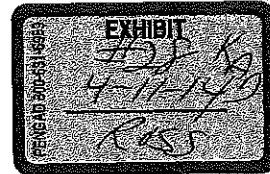
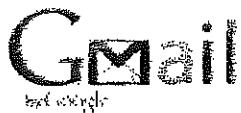
- 0 1 2 3 4 5 Perform activities on schedule, be punctual
- 0 1 2 3 4 5 Adapt to limits or standards
- 0 1 2 3 4 5 Manage conflicts with others - negotiate, compromise
- 0 1 2 3 4 5 Set realistic goals, has good autonomous judgment

Overall Impairment Rating (0 to 5): 3

GAF: _____

Health Care Provider's Signature: Stephanie

Specialty: psychiatrist




Letter to Met Life

Stephanie Ross <stross14@gmail.com>
To: **Walt Tuvell** <walt.tuvell@gmail.com>

Fri, Sep 28, 2012 at 2:08 PM

Hey Walt,
Take a look at this before I send it back.
Thanks,
Stephanie

 **Response to MEtLife review**
115K

MetLife Disability
PO Box 14592
Lexington KY 40511-4592

September 28, 2012

RE: Walter Tuvell
Claim # 651202106445

To Whom It May Concern:

I am writing in response to the review sent to me by MetLife regarding a client of mine, Walter Tuvell. I received a phone call from Dr. Rummeler on 9/11/12. But was unable to return his call until the following week, on Tuesday September 18. I repeated this effort the following day but was unable to reach him and did not hear back again.

The following is a copy of what I wrote in an addendum to Met Life on 1/31/12:

*Addendum to Met Life Attending Physician Statement
1/31/2012
Regarding Walter Tuvell 6/19/1947
From Stephanie Ross, LICSW
Psychotherapist, treating clinician*

Mr. Tuvell suffers from PTSD and due to his recent re-traumatization at his work place has suffered an exacerbation of many of his symptoms. He suffers sleep disturbance, eating disturbance, anxiety, depression, hypersensitivity and reactivity in social interaction. I recommended his medical leave from this work place as necessary for his recovery and re-stabilization. It was my recommendation that the only course to recovery for Mr. Tuvell required a reassignment by the company. This recommendation has not been heeded. In my opinion a return to this triggering work place would be detrimental to Mr. Tuvell and would inhibit his recovery.

To reiterate and expand this statement I add the following: It is the nature of the PTSD experience that someone can be quite functional in

many other settings but if they are exposed to the trauma related stimuli, including the perceived perpetrators of this trauma, they will experience the symptoms again. Although Mr. Tuvell continued to improve in his symptoms and was prepared to work full time, in my clinical judgement, it was not advisable for him to return to the work situation in which he was re-traumatized and where his PTSD would again be exacerbated. This was observed even in the my office setting when talking about the particulars of the events that brought these symptoms on in the first place. The symptoms would return if Mr. Tuvell had to drive near the facility and he would have to pull over and manage intense anxiety symptoms and emotional overwhelm.

On the other hand, in a new setting with different people it was possible that Mr. Tuvell could function quite well and attend his work. This is not at all unusual with clients with this primary diagnosis. In my understanding many people who have PTSD can be highly functional in one setting and situation and extremely triggered and highly dysfunctional in the trigger stimulated environment.

I continue to see Mr. Tuvell and continue to work on desensitization of these triggers. It is a slow process to work through. At no time could I recommend that he return to his job as it was. The company chose not to respond to his request for a transfer. I did not believe that Mr. Tuvell would meet the criteria needed to be functional in the job that he previously held. I believe that would have jeopardized his considerable recovery. It was on this basis that I continued to file his disability forms for MetLife.

I would appreciate it if you would consider this my final response to your inquiries.

Sincerely,

Stephanie Ross LICSW
742 Massachusetts Ave.
Arlington MA 02476

Volume I
Pages 1 to 169
Exhibits 1 to 15

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----x
WALTER TUVELL, :
 Plaintiff, :
 : vs. : Civil Action No.
 : 13-cv-11292-DJC
INTERNATIONAL BUSINESS :
MACHINES, INC., :
 : Defendant. :
-----x

ORAL DEPOSITION OF CHRISTOPHER FRANK KIME

On the 7th day of March, 2014, between the hours of 10:07 a.m. and 2:57 p.m., in the offices of Jackson Lewis P.C., 111 Congress Avenue, 13th Floor, Austin, Texas, before me, CYNTHIA VOHLKEN, a Certified Shorthand Reporter for the State of Texas, appeared CHRISTOPHER FRANK KIME, who, being by me first duly sworn, gave an oral deposition at the instance of the Plaintiff in said cause, pursuant to the Federal Rules of Civil Procedure.

PRESENT:

(By telephonic means)
Rodgers, Powers & Schwartz LLP
(By Robert S. Mantell, Esq.)
18 Tremont Street, Suite 500
Boston, Massachusetts 02108
617.742.7010
RMantell@TheEmploymentLawyers.com
for the Plaintiff.

(Continued)

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1 Q. Could you look at Exhibit 3, please?

2 MR. PORTER: Exhibit 3. Oh, I'm sorry.

3 I'm using mine. Exhibit 3.

4 He has Exhibit 3 and he's reading it.

5 A. (Witness reviewing document). I have
6 reviewed Exhibit 3.

7 Q. (BY MR. MANTELL) Do you recognize
8 Exhibit 3?

9 A. I believe I do. It looks like an e-mail
10 from Walt to myself.

11 Q. Okay. And did you receive this e-mail from
12 Mr. Tuvell on or about December 1st, 2011?

13 A. To the best of my knowledge, that is
14 correct.

15 Q. Okay. And is it fair to say that as of
16 December 1st, 2011 you understood Mr. Tuvell to be
17 on short-term disability?

18 MR. PORTER: Objection.

19 A. In the e-mail that he provided me he
20 communicated that fact in the second paragraph.

21 Q. (BY MR. MANTELL) And were you still
22 interested in considering Mr. Tuvell for the
23 position knowing that he was on short-term
24 disability?

Christopher Frank Kime - March 7, 2014

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1 A. Yes.

2 Q. Was it your understanding that GOM
3 transfers were available to those on short-term
4 disability?

5 MR. PORTER: Objection.

6 A. I had no knowledge of any impact of
7 short-term disability status on GOM transfers.

8 Q. (BY MR. MANTELL) Did the fact that he was
9 on -- Mr. Tuvell on STD, short-term disability, in
10 any way impact his consideration as a candidate for
11 the 579 position?

12 A. No.

13 Q. And is it fair to say that you were not
14 aware of any IBM policy or practice that would have
15 prevented Mr. Tuvell from being considered for the
16 579 position based on his status as being on S --
17 short-term disability leave?

18 A. Can --

19 MR. PORTER: Objection to the form.

20 Do you?

21 Q. (BY MR. MANTELL) Were you aware of any IBM
22 policy or practice that would have prevented or
23 somehow interfered with Mr. Tuvell's candidacy for
24 the 579 position based on his being on short-term

Christopher Frank Kime - March 7, 2014

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1 disability leave?

2 A. I was not aware of any -- did you call it
3 practice or policy?

4 Q. Yes.

5 A. That was in place that would have prevented
6 him coming off of a short-term disability and
7 filling the position.

8 Q. As of this point, as of December 1st, 2011,
9 what was your understanding of Mr. Tuvell's medical
10 condition?

11 A. I had no knowledge of any medical
12 condition.

13 Q. Did you make any inquiry of anyone
14 concerning Mr. Tuvell's medical situation?

15 A. I did not.

16 Q. Did you make any inquiry of anyone
17 concerning the reason why Mr. Tuvell went on
18 short-term disability?

19 A. I did not.

20 Q. Did you interview Mr. Tuvell?

21 A. I did.

22 Q. When did you interview him?

23 A. I don't recall the exact date.

24 Q. If I told you it was on or about December

Christopher Frank Kime - March 7, 2014

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1 that. I know that I would have communicated to him
2 that Brian and Harvey had talked with Walt and based
3 on those conversations we had not excluded him as a
4 candidate.

5 Q. Can you recall anything else that was said
6 between you and Mr. Mathieu prior to the time that
7 Mr. Tuvell was rejected for the position concerning
8 Mr. Tuvell's candidacy for the 579 position?

9 MR. PORTER: Can you repeat that question
10 back? You don't have to repeat it. Can you read it
11 back, please?

12 (Requested portion was read)

13 MR. PORTER: Okay. Objection to the form.
14 You can answer.

15 A. As part of the effort to understand Walt's
16 job performance history I was unable to get any
17 record from our internal tools and I reached out to
18 his current manager at the time and I would have --
19 I had a follow-on conversation with Arnaud after
20 that where we discussed the input I received.

21 Q. (BY MR. MANTELL) Okay. I'm asking you
22 about your conversation with Mr. Mathieu.

23 MR. PORTER: He just told you that.

24 A. That -- that is relevant to the

Christopher Frank Kime - March 7, 2014

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1 conversation I had with Mr. Mathieu. We would have
2 discussed the content of my conversation with Walt's
3 current manager at the time.

4 Q. (BY MR. MANTELL) I see. And what was said
5 during that conversation?

6 A. What was said --

7 Q. Everything you can --

8 MR. PORTER: Which conversation, the one
9 with the manager or the one with Mathieu?

10 Q. (BY MR. MANTELL) The one after you met
11 with Mr. Feldman or after you spoke to Mr. Feldman.

12 MR. PORTER: Do you know what we are
13 talking about?

14 A. My conversation with Mr. Mathieu?

15 Q. (BY MR. MANTELL) Yes.

16 A. In the conversation I had with Mr. Mathieu
17 subsequent to a discussion with Mr. Feldman I
18 communicated that the feedback indicated that Walt
19 had not had -- had issues working with his current
20 team which indicated a potential problem fit for our
21 role.

22 Q. What exactly did you say to Mr. Mathieu?

23 MR. PORTER: Objection to form.

24 A. I cannot recall the exact words that I used

Christopher Frank Kime - March 7, 2014

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1 in my conversation with Mr. Mathieu.

2 Q. (BY MR. MANTELL) What generally did you
3 say to Mr. Mathieu?

4 MR. PORTER: Objection, asked and answered.

5 A. As I stated, the conversation with
6 Mr. Feldman provided feedback which indicated that
7 the job performance was not to a high standard and
8 that there were issues with -- working with team
9 members.

10 Q. (BY MR. MANTELL) And what did Mr. Mathieu
11 respond with?

12 MR. PORTER: Objection to the form.

13 A. I cannot state exactly what Mr. Mathieu
14 said in his words. I can generally communicate that
15 without a record of a job history it is very
16 challenging to move forward with any type of an
17 internal transfer and given the feedback that we
18 had, which was the only information we had regarding
19 job history, we would not be moving forward with an
20 offer.

21 Q. (BY MR. MANTELL) Did Mr. Mathieu say --
22 tell you to reject Mr. Tuvell?

23 A. I don't believe that it would have come in
24 the form of a direct order. Again, these decisions

Christopher Frank Kime - March 7, 2014

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1 Q. Can you recall anything at all that was
2 said by Mr. Feldman concerning Mr. Tuvell's
3 performance during the December 13, 2011 call?

4 A. I cannot recall the exact words that
5 Mr. Feldman would have used, but certainly he
6 communicated that Walt had had difficulties working
7 with other people in the group and he had been moved
8 from one team to another and still had not found a
9 role that appeared to work for both Mr. Tuvell and
10 his team.

11 Q. Did Mr. Feldman say anything else about
12 Mr. Tuvell's performance during this telephone call?

13 MR. PORTER: Objection to the form.

14 You can answer.

15 A. I cannot recall the details of the
16 conversation enough to provide more information.

17 Q. (BY MR. MANTELL) Have you exhausted your
18 recollection concerning anything that Mr. Feldman
19 said concerning Mr. Tuvell's performance?

20 MR. PORTER: On the telephone call?

21 Q. (BY MR. MANTELL) On the telephone call.

22 A. To the best of my knowledge I have tried to
23 communicate the facts and content of the
24 conversation that I had with Mr. Feldman on the

Christopher Frank Kime - March 7, 2014

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1 phone.

2 Q. So is it fair to say that you've exhausted
3 your recollection concerning what Mr. Feldman told
4 you about Mr. Tuvell's performance on this telephone
5 call?

6 A. To the best of my knowledge I have provided
7 all the information that I can regarding the content
8 of the conversation with Mr. Feldman on the
9 telephone.

10 Q. Okay. Did Mister -- what to your
11 recollection did Mr. Feldman say concerning problems
12 that Mr. Tuvell had working with others on this
13 telephone call?

14 A. I cannot recall the exact words that
15 Mr. Feldman used to express the issues that had
16 occurred. To the best of my recollection I can
17 state that Mr. Tuvell had been in at least two
18 positions and in both of those positions he had
19 technical skills that was -- but he had not been
20 able to work well with the team in order to achieve
21 the level of productivity that was expected and
22 hoped of him.

23 Q. Was anything else said concerning problems
24 Mr. Tuvell had?

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1 specifics I cannot recall them at this moment.

2 Q. Did Mr. Feldman refer to Mr. Tuvell's
3 short-term disability during this telephone call?

4 A. To the best of my knowledge we did mention
5 that he was on short-term disability at this time
6 as --

7 MR. PORTER: Let him finish. Rob, he's
8 still answering.

9 A. The context of that was that he was on
10 short-term disability, that we did not have a date
11 specifically when he was coming back and that
12 because of the short-term disability that we -- I'm
13 trying to recall if we discussed the -- whether or
14 not that actually prevented him from providing a
15 performance review. I don't recall.

16 Q. (BY MR. MANTELL) Did Mr. Feldman tell you
17 about any medical condition or diagnosis suffered by
18 Mr. Tuvell?

19 A. To the best of my knowledge Mr. Feldman did
20 not discuss any medical diagnosis regarding
21 Mr. Tuvell.

22 Q. Did you have any idea at this point why
23 Mr. Tuvell was on short-term disability?

24 A. I did not at that point have any idea why

Christopher Frank Kime - March 7, 2014

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1 Mr. Tuvell was on short-term disability.

2 Q. At that point did you have knowledge that
3 Mr. Tuvell had taken short-term disability as a
4 reasonable accommodation?

5 A. At that point I did not have any
6 information regarding why Mr. Tuvell was on
7 short-term disability.

8 Q. During this telephone call with Mr. Feldman
9 on December 13, 2011 did Mr. Feldman indicate to you
10 that human resources had become involved with
11 Mr. Tuvell's situation?

12 A. I do not recall that Mr. Feldman indicated
13 that human resources had become involved in any
14 situation with Mr. Tuvell.

15 Q. In this conversation with Mr. Feldman did
16 he indicate that IBM's legal department had become
17 involved with Mr. Tuvell's situation?

18 A. I do not recall that Mr. Feldman indicated
19 that IBM legal had become involved with any
20 situation regarding Mr. Tuvell.

21 Q. In this conversation did Mr. Feldman
22 indicate to you that Mr. Tuvell had filed claims
23 alleging harassment or discrimination?

24 A. I do not recall that Mr. Feldman mentioned

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1 any claims regarding harassment or discrimination in
2 the conversation that we had.

3 Q. Did you ever learn that Mr. Tuvell had
4 filed internal claims of harassment or
5 discrimination prior to the rejection of Mr. Tuvell
6 for the 579 position?

7 A. No, I did not.

8 Q. So after this telephone conversation that
9 you had with Mr. Feldman on December 13th is it fair
10 to say that you then continued the Sametime chat?

11 A. The Sametime chat stays open until you
12 close it, so the indication here from this
13 transcript is that I did not close the screen.

14 Q. So the Sametime chat was open even though
15 you were talking on the phone; is that correct?

16 A. That is correct.

17 Q. Okay. And after the phone call ended is it
18 fair to say that you restarted texting with
19 Mr. Feldman?

20 A. Technically it would be chatting, but yes,
21 I -- I did reinitiate the chat apparently at 1348.

22 Q. Okay. Now, at one point you ask if
23 Mr. Feldman wants to start private screen. Do you
24 see where it says that?

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1 Q. Now, during your last chat you say:
2 "certainly I did not understand the STD situation
3 and
4 underestimated its significance." Do you see where
5 you said -- you wrote that on December 15th?

6 A. I do.

7 Q. What did you -- what was your understanding
8 at that moment of the STD situation?

9 A. I was unaware that the STD situation would
10 prevent Mr. Feldman from providing a recorded -- a
11 documented performance work history, which is
12 something that I can use to bring forward with my
13 management chain and -- and have a discussion
14 regarding the qualifications.

15 Q. What did you mean when you talked about the
16 significance of the STD?

17 MR. PORTER: Objection to --

18 A. I was unaware that an STD situation
19 prevented Mr. Feldman from providing a documented
20 work performance history.

21 Q. (BY MR. MANTELL) Well, from this chat
22 where it says: "I do not envy you having to deal
23 with HR and" the "lawyers at this point - certainly
24 I did not understand the STD situation and

Christopher Frank Kime - March 7, 2014

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1 that we have to make regarding a candidate and
2 whether they will be happy in the role and be
3 productive in the role.

4 Q. Well, can you tell me each and every reason
5 why Mr. Tuvell was rejected for the 579 position?

6 A. I don't believe I can tell you each and
7 every reason. I did not document all of the pros
8 and cons that we went through regarding Mr. Tuvell
9 and his suitability for the position.

10 Q. Can you tell me each and every reason, the
11 best of your recollection, why Mr. Tuvell was
12 rejected for the position?

13 A. I don't believe that I can provide you a
14 documented all reasons that Mr. Tuvell was not
15 offered the position.

16 Q. I'm not asking about what's documented and
17 what is not. I want to know in your mind, and
18 you've testified to various reasons so far, in your
19 mind what is each and every reason to the best of
20 your recollection that Mr. Tuvell was rejected for
21 the 579 position.

22 A. Okay. I can try and go through a full list
23 of reasons that I think that Mr. Tuvell was not a
24 good fit for the position.

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1 He did not have specifically applicable
2 technical skills regarding the actual product, the
3 MQ product, or the platform that we were working on,
4 the NonStop platform. The platform is a very mature
5 and yet not particularly exciting or appealing
6 platform to some people who work in technology, so
7 there were certainly concerns about whether he would
8 be interested in really continuing with that role..

9 We have a small team of dedicated
10 individuals who have all spent a significant amount
11 of time working on the product and we were looking
12 for individuals who would be able to make a
13 long-term commitment. Developing the skills to work
14 on the product takes time. It's a multiyear effort
15 to get to a point where we feel that somebody can
16 contribute at the necessary level for what we were
17 looking at on the team. Looking at Mr. Tuvell's job
18 history I did not see any positions that he had held
19 for that type of a time span. So that certainly led
20 to some concern.

21 Following up on that, he expressed a strong
22 desire to do development work, which I did not feel
23 in a position to offer him. Mr. Feldman had had
24 opportunities to offer him multiple different

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1 positions in his area and had not found one to the
2 liking of Mr. Tuvell. I had one position to offer
3 and I was already gravely concerned that it would
4 not necessarily have the characteristics that would
5 be to Mr. Tuvell's liking.

6 In his job history he showed that he had
7 moved looking for a position he would like. In my
8 interactions with Mr. Feldman he indicated that he
9 had not been able to find a position that Mr. Tuvell
10 liked. Given my limited resources and opportunities
11 of what I could offer him to work on, I was
12 certainly concerned that we may have difficulty
13 finding a position that Mr. Tuvell would be happy in
14 and committed to.

15 Despite the positive conversations and our
16 congenial interactions, we were certainly not
17 rejecting him as a candidate outright at the start.
18 We wanted to keep the conversation going. We were
19 not in a position where we had so many applicants
20 that we could easily turn people away without doing
21 what we would consider a deep evaluation.

22 After performing that evaluation I think
23 I've listed some serious concerns that we had. I
24 pointed to some details of why we did not move

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1 forward with the offer. I've tried to elaborate in
2 as much detail as I can recall some of the reasons
3 why we did not move forward with offering a position
4 to Mr. Tuvell.

5 Q. Have you completed your answer?

6 A. I have given I believe to be a full answer.
7 I can try and provide more details if you think that
8 they are still lacking.

9 Q. Did you consult with human resources in
10 making the decision to reject Mr. Tuvell for the 579
11 position?

12 A. I did not consult with human resources
13 prior to sending the communication that we have
14 listed as Exhibit 11.

15 Q. Did you consult with IBM's legal department
16 prior to sending Exhibit 11?

17 A. I did not communicate with IBM's legal
18 department prior to sending the e-mail, Exhibit 11.

19 Q. Did you speak to Mr. Metzger prior to
20 sending Exhibit 11?

21 A. I do not know at this point who Mr. Metzger
22 is.

23 Q. Did you speak with Ms. Kathleen Dean prior
24 to sending Exhibit 11?

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1 period that this job posting was active we did not
2 receive any viable candidates and we did not
3 continue announcing the position or seek --

4 Q. When did Exhibit 13 lapse?

5 A. I do not know the exact date.

6 Q. Do you know generally when it lapsed?

7 A. No, I do not.

8 Q. And it's your testimony that you stopped
9 looking for candidates for the position after
10 Exhibit 13 lapsed?

11 A. Yes.

12 Q. And is it fair to say that the 125 position
13 was the same as the -- the prior position that we
14 have been talking about?

15 A. Yes. As I referred to earlier, it is
16 identical to the 579 position.

17 Q. Okay. To your understanding did Mr. Tuvell
18 apply for the 125 position?

19 A. That is correct.

20 Q. Okay. And did you consider Mr. Tuvell for
21 this 125 position?

22 A. Mr. Tuvell had already been considered for
23 the 579 position, which is identical to the 125
24 position. We had declined to move forward with his

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1 candidacy on the 579 position so he was not being
2 considered for the 125 position.

3 Q. Was anyone else interviewed for the 125
4 position?

5 A. I do not recall at this time.

6 Q. So you don't recall whether other people
7 were considered for the 125 position?

8 A. I do not recall at this time.

9 Q. Did you ever respond to Mr. Tuvell's
10 application?

11 A. I did not.

12 Q. Why not?

13 A. I believe at that point Mr. Tuvell had
14 already taken legal action and I was advised at that
15 point by HR not to engage in further interactions
16 with Mr. Tuvell.

17 Q. Did anyone investigate with you the
18 propriety of rejecting Mr. Tuvell for this position
19 or for the prior position?

20 A. Did anyone?

21 Q. Yes.

22 A. What do you mean by the propriety? The --
23 the legality?

24 Q. Whether it was appropriate or not. Did

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WALTER TUVELL,
Plaintiff,

VS.

C.A. No. 13-cv-11292-DJC

INTERNATIONAL BUSINESS
MACHINES, INC.,
Defendant.

REPORTER'S CERTIFICATION
ORAL DEPOSITION OF
CHRISTOPHER FRANK KIME
MARCH 7, 2014

I, CYNTHIA VOHLKEN, Certified Shorthand
Reporter in and for the State of Texas, hereby
certify to the following:

That the witness, CHRISTOPHER FRANK KIME,
was duly sworn by the officer and that the
transcript of the oral deposition is a true record
of the testimony given by the witness;

~~I further certify that pursuant to FRCP~~
Rule 30(f)(1) that the signature of the deponent:
 X was requested by the deponent or
a party before the completion of the deposition and
returned within 30 days from date of receipt of the
transcript. If returned, the attached Changes and

1 Signature Page contains any changes and the reasons
2 therefor;

3 _____ was not requested by the deponent or
4 a party before the completion of the deposition.

5 I further certify that I am neither
6 attorney nor counsel for, related to, nor employed
7 by any of the parties to the action in which this
8 testimony was taken. Further, I am not a relative
9 or employee of any attorney of record in this cause,
10 nor am I financially or otherwise interested in the
11 outcome of the action.

12
13 Subscribed and sworn to on this the 18th
14 day of March, 2014.

15
16
17
18 _____
19 Cynthia Vohlken, Texas CSR 1059
20 Expiration Date: 12/31/2014
21 Doris O. Wong Associates, Inc.
22 50 Franklin Street
23 3rd Floor
24 Boston, Massachusetts 02110
Telephone: 617.426.2432
E-Mail: cindy@cvreporting.com

From: Walter Tuvell
To: Daniel Feldman
CC: Charlene Diotalevi; Kelli-ann McCabe
BCC: llkforms
Sent Date: 2011-06-14 14:03:39:000
Received Date:
Subject: Re: Summer plans
Attachments:



Here's what I know at this time, both certainly and conjecturally:

For sure:

Pre-op mtg (Dr or Hosp, not in pocket calendar, bug): Mon Jun 27.

Pre-op mtg (Dr or Hosp, not in pocket calendar, bug): Wed Jun 29.

Surgery: Thu Jul 7 – first day out, not working that day.

Fri Jul 8: Post-op day, not working.

Surgery follow-up with Dr: Tue Jul 19.

Mon Jul 25 - Fri Jul 29: Vacation.

Conjecture:

Mon Jul 11 - Fri Jul 22: Will be able to (and want to) work-at-home many/most days

Mon Aug 1 - Return to work-in-office.

Daniel Feldman—06/14/2011 09:52:25 AM—Walt, I need to report your absence to the case management folks at IHS (which I think stands for In

From: Daniel Feldman/Marlborough/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Charlene Diotalevi/Marlborough/IBM@IBMUS, Kelli-ann McCabe/Marlborough/IBM@IBMUS
Date: 06/14/2011 09:52 AM
Subject: Re: Summer plans

Walt,

I need to report your absence to the case management folks at IHS (which I think stands for Integrated Health Services). I believe they will assign a case worker once I report your absence. I will need to know the dates you expect to be absent as soon as you can provide them. I don't think that it is critical that I know especially far ahead of time.

As I noted below, I will be required to fill out time sheets for you during your absence.

After the case is open, you will be required to get and complete a form called a Medical Treatment Report (MTR).

You can find more details (but not many) here: <http://w3-03.ibm.com/hr/us/ohs/gohsweb.nsf/pages/casemanagement.htm>

including a link to the MTR. The MTR is here: <http://w3-01.ibm.com/hr/us/hrforms/data/mtr.pdf>

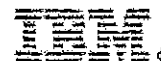
I'll call IHS and report your absence once you have a moderately clear idea of what the time line looks like. I don't think it is especially critical that you know the exact duration. So, for example, if you know the surgery is on 7/7 and you know you will be out starting on 7/5 and you expect to be out for about 4 (just an example) weeks, that's enough for me to open the case. I'll call them as soon as you can give me that level of detail.

I've worked with them before and they are quite helpful and knowledgeable. If you have any questions about the process, you should feel free to call them.

-Dan.

Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone: 508 382 8480
E-mail: dfeldman@us.ibm.com



26 Forest St
Marlborough, MA 01752
United States

Walter Tuvell—06/14/2011 09:36:49 AM---Charlene did you include the link? I didn't see it. From: Charlene Diotalevi/Marlborough/IBM

From: Walter Tuvell/Marlborough/IBM
To: Charlene Diotalevi/Marlborough/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS, Daniel Feldman/Marlborough/IBM@IBMUS
Date: 06/14/2011 09:36 AM
Subject: Re: Summer plans

Charlene did you include the link? I didn't see it.

Charlene Diotalevi—06/14/2011 09:31:45 AM---hi Walt. Below is the link to the STD information on W3 so you understand what you are entitled to.

From: Charlene Diotalevi/Marlborough/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS, Daniel Feldman/Marlborough/IBM@IBMUS
Date: 06/14/2011 09:31 AM
Subject: Re: Summer plans

hi Walt.

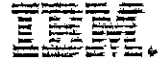
Below is the link to the STD information on W3 so you understand what you are entitled to.

Dan,

You will need to contact the IHS to report Walt's impending surgery. They will provide you with next steps. You may also look this up on the manager portal/checklists for an employee going out on STD.

Let me know if you have any questions.
Charlene.

Charlene Diotalevi 26 Forest St



Principal HR Generalist Marlborough, MA 01752

Direct: (508) 382-8419

FAX: (508) 382-8510

e-mail: cdiotale@us.ibm.com

Walter Tuvell—06/14/2011 08:36:23 AM—Sure, I will be happy to comply with any policies/procedures that may be applicable. Right now, I ca

From: Walter Tuvell/Marlborough/IBM
To: Kelli-ann McCabe/Marlborough/IBM@IBMUS
Cc: Daniel Feldman/Marlborough/IBM@IBMUS, Charlene Diotalevi/Marlborough/IBM@IBMUS
Date: 06/14/2011 08:36 AM
Subject: Re: Summer plans

Sure, I will be happy to comply with any policies/procedures that may be applicable.

Right now, I cannot give exact dates, I only know what I wrote in the first note in this thread. I will know approximate dates after my 2 pre-op mtgs, but I expect those to say things "you should take it really easy for 6 weeks". I know that kind of advice is too conservative for me, because after a hernia operation I was able to "run" (= "gentle shuffle") after only 10 days. So I expect exact dates are unpredictable, and will have to be made-up on-the-fly, according to how I feel on a given day.

Charlene, I will await your instructions.

Kelli-ann McCabe—06/14/2011 08:21:57 AM—Hi, This would seem to be covered under the sick/short term leave policy of IBM. I have copied Char

From: Kelli-ann McCabe/Marlborough/IBM
To: Daniel Feldman/Marlborough/IBM@IBMUS
Cc: Walter Tuvell/Marlborough/IBM@IBMUS, Charlene Diotalevi/Marlborough/IBM@IBMUS
Date: 06/14/2011 08:21 AM
Subject: Re: Summer plans

Hi,

This would seem to be covered under the sick/short term leave policy of IBM. I have copied Charlene on this as she is familiar with this program. Charlene, please connect with Walt to discuss what IBM requires to support the leave.

Thanks
Kelli

*** Please note my new email address.***

Kelliann McCabe
Vice President of Human Resources
Netezza, an IBM Company
26 Forest St.
Marlborough, MA 01752
+508 382 8556 DIRECT
+508 397 1680 MOBILE
+508 382 8510 FAX
mccabek@us.ibm.com

Daniel Feldman—06/14/2011 06:35:14 AM—Walt, I'm not interested in a day by day update. Please provide me with the dates you will be absen

From: Daniel Feldman/Marlborough/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS
Date: 06/14/2011 06:35 AM
Subject: Re: Summer plans

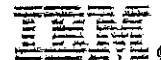
Walt,

I'm not interested in a day by day update. Please provide me with the dates you will be absent from work and whether those days are vacation or sick time.

-Dan.

Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone: 508 382 8480
E-mail: dfeldman@us.ibm.com



26 Forest St
Marlborough, MA 01752
United States

Walter Tuvell—06/13/2011 05:17:38 PM—Yes, certainly, when the time comes I'll update you day-by-day what's happening. I don't know this

From: Walter Tuvell/Marlborough/IBM
To: Daniel Feldman/Marlborough/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS
Date: 06/13/2011 05:17 PM
Subject: Re: Summer plans

Yes, certainly, when the time comes I'll update you day-by-day what's happening. I don't know this information ahead of time, but I'll be having my pre-op meetings (one with with Dr, one with Hosp) in the next couple of weeks, and I should learn something there.

Daniel Feldman--06/13/2011 02:10:22 PM--Walt, Thanks for the notice. You will need to tell me the specific dates that you'll be out and whi

From: Daniel Feldman/Marlborough/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS
Date: 06/13/2011 02:10 PM
Subject: Re: Summer plans

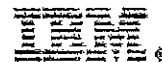
Walt,

Thanks for the notice. You will need to tell me the specific dates that you'll be out and which days you want counted as sick time. For extended personal illness absences I have to file time cards for you.

-Dan.

Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone:508 382 8480
E-mail: dfeldman@us.ibm.com



26 Forest St
Marlborough, MA 01752
United States

Walter Tuvell--06/13/2011 11:19:49 AM--Dan, I am scheduled to undergo a surgery on July 7. This will necessitate my being away from Maribo

From: Walter Tuvell/Marlborough/IBM
To: Daniel Feldman/Marlborough/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS
Date: 06/13/2011 11:19 AM
Subject: Summer plans

Dan, I am scheduled to undergo a surgery on July 7. This will necessitate my being away from Marlboro for approx 4 weeks. Some days during that time I expect to be unable to work, but many days I expect to be able to work-at-home. Also, during that 4-week period, I expect I'll be able to double-up on the time-away-from-office and take a week-long vacation.

- Walt

From: Walter Tuvell
To: Daniel Feldman
CC: Kelli-ann McCabe; Diane Adams
BCC: walt.tuvell; llkforms
Sent Date: 2011-06-15 14:12:53:000
Received Date:
Subject: Re: Transition of responsibilities
Attachments:

Oh Come On.

OK, you want a status report, I'll give you a status report. It is identical to Sujatha's. As if you didn't know that was obviously going to be the case, and which is the reason I didn't bother sending you this redundant, useless information. I tried looking for "my own words", but Sujatha's words can't be bettered, and all we're really after here is clear communications, right? Here they are:

- 1) Finished transition of the Block IO tracing project. (Sujatha to Walter)
- 2) Finished transition of the WaltBar performance tool (Walter to Sujatha)

Dan, I'm very sorry to observe you now showing your true colors in this way. As long as you insist on interacting with me in this sort of blatant (not even an attempt at subtlety) snide harassment/retaliation, I might as well bring the following piece of information (below) about this "transition" to the attention of Kelli-ann and the IST. As you very well know (because I've been telling this to you constantly since you hired me in Nov, so you cannot pretend to be unaware), I have had some terrible things inflicted upon me by unscrupulous management in the past, and I've done everything in my power to avoid a repetition of it. But you and Fritz now appear to be on a campaign of actively persecuting me (this email of yours is a sample piece of evidence). I have no choice but to defend myself. Why you're doing this I have no idea (other than your "only caring about the success of Wahoo"). But I certainly hope IBM has the integrity to expose the truth to all. You and Fritz are the ones choosing to go down this path, and I am doing nothing but reacting and upholding my rights under due process.

To Kelli-ann, Diane, IST:

Dan (whether with or without the conspiracy of Fritz, I know not, because they've together kept me in the dark as to the secret meetings they've held, despite my many requests for 3-way meetings) has not only unilaterally forced an adverse job action upon me (details elsewhere), but has done so by replacing me with an employee whose qualifications are far inferior to mine (I have a PhD, she does not, and my work experience is much more extensive and relevant than hers), who is of a different sex than me (I am male, she is female), and who is much younger than me (in particular, I am over 40, she is under). There was no need for him to do this, because he had a viable alternative choice. He could have replaced me with another person in his group (Ashish Deb), who also has a PhD, is male, and is over 40. Note that all other members of the Wahoo team are male, not female, so switching me with Ashish would have made more sense from that point of view too ("equivalence"). Further, switching me and Ashish would have made much more sense from a business point of view, because the work Ashish is doing is much more compatible with my background than Sujatha's work is.

As you will immediately recognize, this (together with the adverse job action on false grounds upon which this "transition" is predicated) states a prima facie case (and even stronger) for discrimination on the grounds of both age and sex, and perhaps even race (I am Caucasian, Sujatha is not, though neither

is Ashish).

Daniel Feldman—06/15/2011 07:11:36 AM—Walt, I do not have the status report I asked you to provide to me at the end of every business day

From: Daniel Feldman/Marlborough/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS
Date: 06/15/2011 07:11 AM
Subject: Fw: Transition of responsibilities

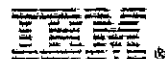
Walt,

I do not have the status report I asked you to provide to me at the end of every business day (see below). While I do have a report from Sujatha, I don't have one from you. Perhaps I was not sufficiently clear. I require a report from each of you daily. In your own words, please detail the transition tasks you complete each day. Please do so until notified that this is no longer necessary. If you believe these instructions are ambiguous or open to interpretation in any way, please seek clarification immediately.

-Dan.

Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone: 508 382 8480
E-mail: dfeldman@us.ibm.com



26 Forest St
Marlborough, MA 01752
United States

— Forwarded by Daniel Feldman/Marlborough/IBM on 06/15/2011 07:04 AM —

From: Daniel Feldman/Marlborough/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS, Sujatha Mizar/Marlborough/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS
Date: 06/14/2011 08:59 AM
Subject: Transition of responsibilities

Sujatha and Walt,

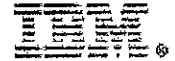
Please provide me with brief email at the end of every business day detailing the transition tasks you have completed and alerting me to any problems or issues you are encountering.

Thanks!

-Dan.

Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone: 508 382 8480
E-mail: dfeldman@us.ibm.com



26 Forest St
Marlborough, MA 01752
United States

From: Walter Tuvell
To: walt.tuvell
CC:
BCC:
Sent Date: 2011-06-15 16:25:11:000
Received Date:
Subject: Fw: Transition of responsibilities
Attachments:

— Forwarded by Walter Tuvell/Marlborough/IBM on 06/15/2011 12:24 PM —

From: Linda King <llkforms@aol.com>
To: Walter Tuvell/Marlborough/IBM@IBMUS
Date: 06/15/2011 12:21 PM
Subject: Re: Fw: Transition of responsibilities

I agree, let him cook his own goose, you make sure that you come out smelling like a rose. You don't have to sink to his level.

On 06/15/2011 12:05 PM, Walter Tuvell wrote:

> I agree Honey, and thank for the support/advice. But once again, he
> reached out specifically to be snide/harassing/retaliating. He Just
> Doesn't Get it. Maybe he will now. (I've seen him do things like this
> technically, with both perf and security, where he tries to "tell" me
> what's what, but he's only semi-smart, not really smart, so he's wrong.
> But in the past, he's accepted his defeats with grace& humility, instead
> of attacking as he is now. Oh well, if he insists on cooking his own
> goose, who am I to deny him the fuel?)

>

>

>

>

>

> **From:** Linda King<llkforms@aol.com>
> **To:** Walter Tuvell/Marlborough/IBM@IBMUS
> **Date:** 06/15/2011 12:01 PM
> **Subject:** Re: Fw: Transition of responsibilities

>

>

>

> I agree this is stupid, but at this point, I'd just keep my head down,
> do what's asked, even if it is stupid, and let HR do their stuff. It
> will all end, don't give him any ammunition, take the high road.

>

> And even though you probably don't agree with it, I suggest you minimize
> your emails to Dan, and the accusations, and just get through this
> period until you can get away from him. Just go on robot mode if at all

> possible.

>

>

>

> On 06/15/2011 10:12 AM, Walter Tuvell wrote:

>> Oh Come On.

>>

>> OK, you want a status report, I'll give you a status report. It is

>> identical to Sujatha's. As if you didn't know that was obviously going

> to

>> be the case, and which is the reason I didn't bother sending you this

>> redundant, useless information. I tried looking for "my own words", but

>> Sujatha's words can't be bettered, and all we're really after here is

> clear

>> communications, right? Here the are:

>>

>> 1) Finished transition of the Block IO tracing project. (Sujatha to

>> Walter)

>> 2) Finished transition of the WaltBar performance tool (Walter to

>> Sujatha)

>>

>>

>> Dan, I'm very sorry to observe you now showing your true colors in this

>> way. As long as you insist on interacting with me in this sort of

> blatant

>> (not even an attempt at subtlety) snide harassment/retaliation, I might

> as

>> well bring the following piece of information (below) about this

>> "transition" to the attention of Kelli-ann and the IST. As you very well

>> know (because I've been telling this to you constantly since you hired me

>> in Nov, so you cannot pretend to be unaware), I have had some terrible

>> things inflicted upon me by unscrupulous management in the past, and I've

>> done everything in my power to avoid a repetition of it. But you and

> Fritz

>> now appear to be on a campaign of actively persecuting me (this email of

>> yours is a sample piece of evidence). I have no choice but to defend

>> myself. Why you're doing this I have no idea (other than your "only

> caring

>> about the success of Wahoo"). But I certainly hope IBM has the integrity

>> to expose the truth to all. You and Fritz are the ones choosing to go

> down

>> this path, and I am doing nothing but reacting and upholding my rights

>> under due process.

>>

>> To Kelli-ann, Diane, IST:

>>

>> Dan (whether with or without the conspiracy of Fritz, I know not, because

>> they've together kept me in the dark as to the secret meetings they've

>> held, despite my many requests for 3-way meetings) has not only

>> unilaterally forced an adverse job action upon me (details elsewhere),

> but

>> has done so by replacing me with an employee whose qualifications are far

>> inferior to mine (I have a PhD, she does not, and my work experience is

>> much more extensive and relevant than hers), who is of a different sex
> than
>> me (I am male, she is female), and who is much younger than me (in
>> particular, I am over 40, she is under). There was no need for him to do
>> this, because he had a viable alternative choice. He could have replaced
>> me with another person in his group (Ashish Deb), who also has a PhD, is
>> male, and is over 40. Note that all other members of the Wahoo team are
>> male, not female, so switching me with Ashish would have made more sense
>> from that point of view too ("equivalence"). Further, switching me and
>> Ashish would have made much more sense from a business point of view,
>> because the work Ashish is doing is much more compatible with my
> background
>> than Sujatha's work is.
>>
>> As you will immediately recognize, this (together with the adverse job
>> action on false grounds upon which this "transition" is predicated)
> states
>> a prima facie case (and even stronger) for discrimination on the grounds
> of
>> both age and sex, and perhaps even race (I am Caucasian, Sujatha is not,
>> though neither is Ashish).
>>
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>>
>> From: Daniel Feldman/Marlborough/IBM
>> To: Walter Tuvell/Marlborough/IBM@IBMUS
>> Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS
>> Date: 06/15/2011 07:11 AM
>> Subject: Fw: Transition of responsibilities
>>
>>
>> Walt,
>>
>> I do not have the status report I asked you to provide to me at the end
> of
>> every business day (see below). While I do have a report from Sujatha, I
>> don't have one from you. Perhaps I was not sufficiently clear. I
> require
>> a report from each of you daily. In your own words, please detail the
>> transition tasks you complete each day. Please do so until notified that
>> this is no longer necessary. If you believe these instructions are
>> ambiguous or open to interpretation in any way, please seek clarification
>> immediately.
>>
>> -Dan.
>>
>> Daniel J. (Dan) Feldman
>> Director, Netezza Performance Architecture
>> Software Group, Information Management

>>

>>

>>

>> Phone: 508 382 8480

(Embedded

> image moved

>> E-mail: dfeldman@us.ibm.com

to file:

> pic26104.gif)

> IBM

>>

> 26 Forest St

> Marlborough, MA 01752

> United States

>>

>>

>> --- Forwarded by Daniel Feldman/Marlborough/IBM on 06/15/2011 07:04 AM

>> ---

>>

>> From: Daniel Feldman/Marlborough/IBM

>> To: Walter Tuvell/Marlborough/IBM@IBMUS, Sujatha

>> Mizar/Marlborough/IBM@IBMUS

>> Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS

>> Date: 06/14/2011 08:59 AM

>> Subject: Transition of responsibilities

>>

>>

>> Sujatha and Walt,

>>

>> Please provide me with brief email at the end of every business day

>> detailing the transition tasks you have completed and alerting me to any

>> problems or issues you are encountering.

>>

>> Thanks!

>>

>> -Dan.

>>

>>

>> Daniel J. (Dan) Feldman

>> Director, Netezza Performance Architecture

>> Software Group, Information Management

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>> Phone: 508 382 8480

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>> E-mail: dfeldman@us.ibm.com

to file:

> pic07753.gif)

> IBM

>>

> 26 Forest St

> Marlborough, MA 01752

> United States

>>

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v

From: Walter Tuvell
To: Daniel Feldman
CC: Kelli-ann McCabe; Diane Adams
BCC: walt.tuvell; llkforms
Sent Date: 2011-06-15 17:23:47:000
Received Date:
Subject: Re: Transition status - 06/14/2011
Attachments:

Oh, hey Dan, I just noticed that in that chain of messages you sent out this morning about "requiring" a status report from me individually in my own words, you neglected to include the most important item: Sujatha's status report sent to you yesterday, with me copied, containing our joint status, and requesting me to add anything she might have forgotten.

This proves you had indeed been adequately updated about my status (by my not "adding anything"). Noting, by the way, that your original request for status update did not say anything about "requiring" individual notes from Sujatha and myself, nor did it require "our own words" individually.

Therefore I'm forwarding Sujatha's note here. For I'm sure you wouldn't want anyone to think you'd intentionally suppress relevant facts. Would you?

Sujatha Mizar—06/14/2011 05:14:48 PM—Hi Dan, Here is the transition status so far:

From: Sujatha Mizar/Marlborough/IBM
To: Daniel Feldman/Marlborough/IBM@IBMUS, Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS
Date: 06/14/2011 05:14 PM
Subject: Transition status - 06/14/2011

Hi Dan,

Here is the transition status so far:

- 1) Finished transition of the Block IO tracing project. (Sujatha to Walter)
- 2) Finished transition of the WaltBar performance tool (Walter to Sujatha)

Walt- please feel free to add anything I might have forgotten.

Thanks!
-Sujatha

From: Walter Tuvell
To: Kelli-ann McCabe; Diane Adams
CC:
BCC: walt.tuvell; ilkforms
Sent Date: 2011-06-16 18:03:02:000
Received Date:
Subject: A "story" about my "transition"?
Attachments:

Kelli-ann & Diane, I've gotten some wind, not very strong (because of reticence on the teller's part), about some story being promulgated about my transition.

It seems, so the story goes, that I voluntarily asked for reassignment, so that I could apply my scientific & mathematical skills at a level more commensurate with my greatness. Or some such bullshit.

If such a story exists, it's a scurrilous lie, and needs to be added to the pile of defamatory acts. For, it implies I'd silently disappear from my friends without even saying goodbye on my way out the door. It says I value them nil. It also says, in light of the "goodbye" letter I sent them, that I'd not only turn my back on them, but that I'd then lie about why I left them in such a hurry.

So sadly the potential existence of such a story must be added to the IST list. Please, God, let it not be so.

From: Walter Tuvell
To: Kelli-ann McCabe; Diane Adams
CC:
BCC: walt.tuvell; llkforms
Sent Date: 2011-06-16 19:47:36:000
Received Date:
Subject: Help
Attachments:

Kelli-ann & Diane:

At the risk of admitting I wasn't clear enough earlier (sorry), I am asking for your help. It is not reasonable for IBM to require me to work for a known-abusive boss. Perhaps not yet "proven"-abusive, but that surely is the case, and anyway IBM cannot comfortably support a policy of "presumed non-abusive" in a case like this, because the consequences of being wrong are just too high.

No, this isn't a "threat", it's a "fear"! I sense Dan is starting a process of "setting me up" (a.k.a. "blackballing" in some circles). You know the trick: Giving me something to do, then claiming I didn't do it, no matter how much I do, and then firing me for "non-performance". This is already peeking through the note I forwarded to you earlier today. For, the wording he's using is far removed (and not well veiled) from the way he's always interacted with me in the past. This looks like the beginning of the road to hell for me.

Please remove all possibility of letting this happen. Get me away from his managership. Fast.

If you think I'm "just trying to get out of work", you should consider what I've accomplished in the 6 months I've been here. After only 2 months in the Performance Group, I determined that the way they measured performance before I got here was all wrong (for years!), and I corrected it "overnight". (This is "PerfScore", see <http://wiki2.netezza.com:8080/pages/viewpage.action?pageId=27134073> on the Netezza internal network.) Not only that, Dan himself supported the old way performance was measured, and indeed he'd instituted performance measurement that way when he earlier had a job in my position at another company (he told me so). And so what I did proved him wrong too. (Yet another hidden reason to "have it in" for me?)

And yes, I do know what I'm talking about. This is also something I've seen before. And he knows it.

From: Walter Tuvell
To: Daniel Feldman
CC: Kelli-ann McCabe; Diane Adams; Lisa Due
BCC: walt.tuvell; ilkforms
Sent Date: 2011-06-17 13:27:20:000
Received Date:
Subject: Re: Transition and status reporting
Attachments:

Dan:

1. Let it be noted by all: I am here RESPONDING to an ACTION proactively taken by you (namely, your letter below). This is a constant refrain of EVERYTHING that's happened during this "unpleasantness". First you and Fritz ATTACK, then I DEFEND against that attack (in as strong a manner as I can muster, of course).
- 2.
3. The manner and tone in which you've written this letter are consistent with an industry badgering/harassment technique, known in some circles as "blackballing" (portrayed falsely by the unscrupulous as a "performance plan" that just happens to come out of the blue, without need and without warning). That is, a manager gives an employee some kind of onerous task to perform, then no matter how well the employee performs it, the manager claims it wasn't good enough. This may go through a few rounds, but eventually the manager fires the employee for "non-performance". Your wording "Part of that ownership for a contributor of your seniority includes responsibility for drafting and reporting against a schedule" is a dead give-away (not even an attempt at subtlety). I know you know about this, because we've discussed it, in the context of your continued effort to "draw me out of my PTSD shell", as you knew it to be, by my telling you I've been subjected to blackballing in the past. In my *opinion* (no, I can't actually prove it at this time), you are now engaging in a program of badgering/harassing/bullying/blackballing me (noting that IBM has "zero tolerance" for this sort of behavior). More details below.
- 4.
5. But before we go there, and in the vein of "you attack, I defend", may I remind you that at our last face-to-face meeting (1 week ago today), I laid all my cards on the table, candidly and honestly, about the route I intended to take, and you encouraged me to take that route. Namely, I said I was interested ("I'm serious", I said) in following up this whole Fritz & transition thing, and I asked you how to proceed. You said I should contact Kelli-ann from the Netezza side, and that I should look around Blue Pages for the IBM side (I did, finding the documents "About Your Job" and "Appeals and Concerns"). That was at the very end of our meeting, and prior to it you asked me "You're still upset about my denying a 3-way meeting, aren't you?", and I responded with a strong "Yes, I am". So you knew that would be an element of my complaint. Yet when you responded to my Weekly Report, wherein I properly recorded that I had indeed contacted Kelli-ann and started the HR process, you took an explicitly/formally adversarial stance, beginning with "Dear Dr. Tuvell". Why? I was only doing exactly what you suggested I do. WERE YOU SETTING ME UP, by having me follow your advice, then attacking me for doing so? In that letter too you pretended I had done something wrong by having mentioned to you, 3 weeks earlier (and which you yourself then re-raised again at that Fri meeting), that I'd been involved in a lawsuit (at the arbitration level) involving defamation. Your writing snidely hinted that I'd somehow "threatened" you and/or Fritz and/or IBM/Netezza. But that was FALSE, and you KNEW it. Namely, you KNEW that the reason I raised the lawsuit thing was that I PROVABLY RECOGNIZED what was happening ("you've seen this movie before" is the way you put it), I DID NOT want it to happen again, and I was BEGGING YOU TO HELP ME. You knew these things, because I TOLD YOU SO. Yet you

had the temerity to twist my words and pretend I mentioned it as a "threat". Dan, have you, at long last, no shame? The heroic reaction on your part would have been: "Walt's been screwed, what Fritz did was wrong, I shouldn't have kept harping on "only care about success of Wahoo", I should have called a 3-way meeting to clear the air, and I'm going to get on-board with the HR process to right this situation". You are no hero.

- 6.
7. Now consider your demand: "Please provide me by end of day tomorrow a first draft for a detailed (one-day granularity) schedule for your work on the assigned projects between now and the beginning of your medical leave." I have no idea what you want, because nobody has ever requested me to provide a 3-week day-by-day schedule like this before. In other words, it's an impossible-to-succeed blackballing task. But for the sake of argument, let's pretend it's a reasonable task. In that case, I still can't do what you want, because I don't know what you want, so you need to send me an example. Could you forward me a similar sample you've requested of me previously? Oh, I forgot, you've never asked me to do anything like that before. Well then, could you forward a similar sample you've requested of somebody else in our group previously? Surely such a thing must exist (as a regular work-item, that is, not as a blackballing technique), else I'm being subjected to disparate treatment, right? Don't bother bringing in a sample from your previous jobs, I'm not interested in something we can't verify.
- 8.
9. Oh yes, speaking of previous jobs, I just want to point out to everyone that Sujatha worked for you at a previous company of yours, and you hand-picked her to work at Netezza, and to replace me on this transition. Didn't think I knew that? Sujatha told me. But I do assume you've already informed this HR process of that fact, because otherwise it could be perceived as a presumption of bias. You did tell them, right?
- 10.
11. Finally, we get to the biggest lie of all: "expand the scope", "significantly increased analytic component", "professionally rewarding and fruitful". Notice how all of these are non-quantitative? That's because the successful blackballer must always be able to claim that the blackballed person didn't perform the required task. But let's look at the way this has actually worked in the recent past (last week): At last week's fateful Fri meeting, you asked what my pending projects were, and I told you that the only thing I was doing was working on "WaltBar" (= "PerfTest"). As I told you, I needed to finish Fritz's "upcoming performance tasks", which I said I could finish that day (and I did), and that I was still in the midst of adding a piece of functionality to WaltBar, namely replacing Devesh's PerfMeasure with NZmon. I told you I could finish that in a week or so, and I requested you to let me do it. BUT YOU REFUSED. You said the transition had to happen immediately, therefore I could no be given the time to finish WaltBar.
- 12.

What was the consequence of that? Well, let us consider. Why was WaltBar written in the first place? Because the existing tool, PerfBar, doesn't prepare reports, it just dumps a ton of undigestible data to disk, which is next to useless (at least, I've haven't heard of anybody using it, instead they complain about not getting a decent report). So WaltBar was designed explicitly to generate reports, and that's exactly what it does. It started as a Wahoo-specific reporting program, namely, it tapped into Devesh's Wahoo-specific PerfMeasure and SpuPerfLog. But just a few weeks ago, at your suggestion, I looked into Nmon, an open-source tool, which I then modified to support the 0.1-second updates required for use in the Netezza environment, and I've been working to replace PerfMeasure (and dropping SpuPerfLog altogether, because it's too detailed for this kind of report), so that WaltBar would then be usable by all NPS products (not just Wahoo), thereby greatly expanding its scope. Beyond that, I've had ideas of how to improve WaltBar, especially by integrating 2 of the elements it already supports (VtSchedEvent with the ASCII graph). I've talked to you and Fritz about this, and to others in Camb, and to Garth (yes, Garth likes this plan, of course). So YOU KNEW WHAT I WANTED TO DO HAS IMPORTANT VALUE, BUT YOU REFUSED TO LET ME DO IT.

And so where will WaltBar go now? One of 2 places: either it will die in Wahoo-land, or it will be improved by Sujatha along the lines I wanted to do. If the first alternative happens, then Netezza will be deprived of the Next Great Tool I've produced here (following on the heels of PerfScore, and the earlier PMtest, which provides the "gold standard" of how to conduct performance studies at Netezza, as you yourself said in public at your Lunch-and-Learn talk a couple months ago). So let's assume the second alternative happens.

1.

Hmm, speaking of PerfScore, a little diversion first: As you recall, I first told you in Jan (only 2 months I started work at Netezza) that the way the performance group had been measuring performance (for years!), namely "geometric mean of elapsed times", was nonsense (actually, I said "makes no sense"). What was your reaction? You said "Why? I see nothing wrong with it, that's what the team has chosen as its figure-of-merit." (This was the first time I'd heard the phrase "figure-of-merit", and I repeated it several times in wondement.) At a later time, you also told me that when you held a position in another company similar to the one I hold at Netezza, your choice for "figure of merit" was "sum of elapsed times", but I had to tell you that also makes no sense. This was very hard for me to do, because of my PTSD, but you did your usual thing of reassuring me it was OK, so I made the leap of faith. Finally, I did write the PerfScore document, and the PerfScore tool, and everybody (even you) now agrees this is the right way to do it. We finally have a solid performance measurement/comparison scheme at Netezza. To what extent could there be a smidgen of envy/jealousy/hate that I succeeded where everybody else, both in and out of the performance group, and throughout the company, and you yourself, failed?

And guess what? WaltBar is the Next Big Thing we need at Netezza from the performance group. It's a crying necessity, much more important than anything Sujatha was doing, and it's exactly the path I was on. But you've explicitly told me I'm not allowed to work on it, but Sujatha is. That is, IF IT SUCCEEDS AT ALL, IT WILL BE VIEWED AS SUJATHA'S CONTRIBUTION, NOT MINE. You've stolen from me my work-product, and given it to somebody unqualified to have done it in the first place, but who will get credit for it nonetheless. While I get to hack away at something that may or may not go somewhere, but which is in any case something Sujatha was happy doing and was making the requisite headway, and which will be hard for me to come up to speed on because it's in an incipient, ill-defined state.

In other words: Perfect blackballing material.

[Disclaimer: I have no ill-feelings about Sujatha at all. Dan's the bad actor here, not Sujatha.]

Daniel Feldman--06/16/2011 10:25:10 AM--Walt, I am seeking your independent perspective on the transition.

From: Daniel Feldman/Marlborough/IBM
 To: Walter Tuvell/Marlborough/IBM@IBMUS
 Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS, Diane Adams/Fishkill/IBM@IBMUS
 Date: 06/16/2011 10:25 AM
 Subject: Transition and status reporting

Walt,

I am seeking your independent perspective on the transition.

Once the transition is complete and you are able to demonstrate your command of the tools and technologies that have been in use to date and to develop an independent view of their appropriateness and efficacy you should be able to recommend changes or improvements. It is very important that I have enough information to assess the state of the transition and that I be apprised of that state.

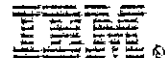
At this point it is important that you take full ownership of the work; these are your projects and the knowledge derived from them will have a profound impact on the success of our products in the marketplace. Part of that ownership for a contributor of your seniority includes responsibility for drafting and reporting against a schedule. The outline we developed on the whiteboard and that Sujatha subsequently documented can function as the beginning of such a schedule. Please provide me by end of day tomorrow a first draft for a detailed (one-day granularity) schedule for your work on the assigned projects between now and the beginning of your medical leave.

In addition, I would like to expand the scope of the work Sujatha had been doing and that you are now responsible for to include a significantly increased analytic component, work that Garth Dickie (like you, a PhD in Math) has been doing. I am hopeful that a collaboration between you and Garth will be professionally rewarding and fruitful for you.

-Dan.

Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone: 508 382 8480
E-mail: dfeldman@us.ibm.com



26 Forest St
Marlborough, MA 01752
United States

From: Walter Tuvell
To: lkforms
CC:
BCC:
Sent Date: 2011-06-24 12:59:32:000
Received Date:
Subject: Here's that email we talked about
Attachments:

— Forwarded by Walter Tuvell/Marlborough/IBM on 06/24/2011 08:55 AM —

From: Lisa Due/Somers/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Date: 06/23/2011 02:11 PM
Subject: Re:

Thank you for explaining that Walt, I had the projects/roles reversed but you have since clarified.

As for the medical issues you refer to, I advise you to contact the Health Services department who will handle your issues in a confidential manner. Diane Adams or Kelli-ann McCabe will know who your specific contact should be for the organization you are in (you do not have to reveal the specific nature of your medical concerns to ANYONE except, of course, the medical case managers.)

There are also two other resources you may want to look into: the Employee Assistance Program and Lifeworks. Here are the links that will tell you more about them...

EAP:
<http://w3-01.ibm.com/hr/us/benefits/mhcp/eap.html>

Lifeworks:
<http://w3-01.ibm.com/hr/us/benefits/otherservices/lifeworks.html>

I need to conduct a few more interviews before/if any changes are to be made, so it would be premature to do that at this time.

Regards,

Lisa Due
19 Skyline Drive



Senior HR Partner/Case Manager
Hawthorne, NY 10532-1596
IBM CHQ Human Resources
United States of America

HR Integrated Services Team (IST)

Phone:+1-914-784-6177

e-mail:lisadue@us.ibm.com

Walter Tuvell—06/23/2011 01:43:55 PM—Lisa, what you've written doesn't seem to map to what I was saying: 1. Sujatha wrote the 1-page doc

From: Walter Tuvell/Marlborough/IBM

To: Lisa Due/Somers/IBM@IBMUS

Date: 06/23/2011 01:43 PM

Subject: Re:

Lisa, what you've written doesn't seem to map to what I was saying:

1. Sujatha wrote the 1-page doc I sent you, about the 4 projects that Sujatha had been doing, that now I'm supposed to be picking up, not things I'm handing off to her.
2. The stuff I handed off to her was in very good shape, because I'm very organized, and I explained it to her in about an hour (of course that didn't get her to understand the underpinnings, just enough to "push the button", but at least she was productive immediately). The opposite is the case for the stuff she's handing off to me.
3. Her write-up was basically one-line descriptions, as you saw, NONE OF WHICH I had any idea about previously. I have no idea why you say "I know all the steps". I obviously know NONE of the steps, because I know NOTHING of these projects of Sujatha's.
4. Nevertheless, Dan tried to coerce me into writing a day-by-day 3-week schedule, based on Sujatha's 1-page doc, giving me one day to do it! ONE DAY! Yes, of course, the "time frame is of concern"!
5. Yet, when I asked him what he wanted me to do, by giving me an example, he couldn't do it, because he's never asked anyone to do such a thing before. And I've never seen such a thing before either, even though I do have very extensive experience. Without having any idea of what to do, and no example, it is indeed "impossible to succeed" — because anything I do, Dan can say it wasn't what he wanted. That is harassment, pure and simple.
6. Anyone with an ounce of sense knows that such a schedule (day-by-day, 3 weeks, starting from scratch on new technologies) is impossible anyway. When one approaches an unknown technology (not to mention 4 of them!), you have no idea the direction it's going to take after the first step. So, if a 3-week schedule were written, it would necessarily have to be revised already after the very first step, in which case the abusive manager tells the employee they are in violation of the schedule. I know this trick: it's called blackballing.
7. Finally, this so-called "transition" is something Dan and Fritz cooked up in secret anyway, and shoved it down my throat, with no input from me whatsoever. It's not a "transition" just because Dan calls it that. It's punishment, period. Under the circumstances, how am I supposed to cope? I have made it quite clear to HR that I am nearly incapacitated now by recurrence of PTSD, just as Dan knew I would be (because we talked about it, many times). I cannot now eat (because of stomach problems caused

by this anxiety), I cannot sleep (because of lack of food, and mind-spinning perseveration), I cannot concentrate (because of lack of sleep, and intrusive thoughts), and I've started seeing my psychological health-care professionals again about this problem, including psycho-medication. I have begged HR to release from the grasp of the likes of Dan, yet I'm still forced to be here, more vulnerable than ever, and tortured beyond my ability to stand it. Isn't there supposed to be some sort of policy against discrimination on the basis of disability, by forcing me to continue working with/for my tormentor (and if having debilitating PTSD isn't considered a disability, I don't know what is)? Yes, "rape" isn't too strong a word, even though it's not of the sexual kind.

- Walt

Lisa Due--06/23/2011 01:10:55 PM--Walt, this looks like a very small project plan to me that you then will help map out the activities

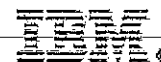
From: Lisa Due/Somers/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Date: 06/23/2011 01:10 PM
Subject: Re:

Walt, this looks like a very small project plan to me that you then will help map out the activities under each bullet. This does not seem out of the realm especially if you are the senior member (and obviously know all the steps) and Sujatha may need guidance (you mentioned she is not on your technical level). During a transition, this is not an "impossible- to- succeed" request because you have the technical expertise to map the project out specifically. (I have seen/done many of these myself.)

You may want to ask Daniel for an extension if the time frame is of concern.

Regards,

Lisa Due 19 Skyline Drive



Senior HR Partner/Case Manager Hawthorne, NY 10532-1596
IBM CHQ Human Resources United States of America
HR Integrated Services Team (IST)
Phone: +1-914-784-6177
e-mail: lisadue@us.ibm.com

Walter Tuvell—06/20/2011 10:59:02 AM---Lisa, attached it the very thin outline, all of which I had zero knowledge about previously, that Da

From: Walter Tuvell/Marlborough/IBM
To: Lisa Due/Somers/IBM@IBMUS
Date: 06/20/2011 10:59 AM
Subject:

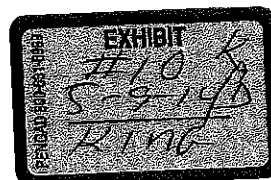
Lisa, attached it the very thin outline, all of which I had zero knowledge about previously, that Dan gave me 1 day to come up with a 3-week day-by-day workplan for!

Given that neither I nor anyone I know has seen anything remotely approaching this kind of onerous task heretofore, if this isn't harassment/bullying/blackballing, then I don't know what is. It is clearly intended to be an impossible-to-succeed task.

I would very much welcome an unbiased third-party assessment of this.

- Walt





-----Original Message-----

From: Walt Tuvell [SMTP:walt@opengroup.org]
Sent: Monday, April 21, 1997 4:43 PM
To: Meg MacGougan; Margaret Johnson; David Thompson (NT)
Cc: walt@opengroup.org; lkforms@aol.com; Joe Maloney; natbra@@microsoft.com; Paul Leach; Peter Brundrett; Bill Gates
Subject: Sleepless in Boston

Meg, Margaret, Dave -

I've written a narrative from my perspective on what happened to me, included below. I don't know what I'll do with this yet, but whatever it is it'll be legal. That's just good "business judgement", right? Come to think of it, maybe Meg was hinting at MS's definition of "business judgement" when she told me, "You have to get in line to sue Microsoft". Also, I spoke to a truly professional recruiter today, and he noted that if MS did this sort of thing to me it's not unlikely you're doing it as a matter of policy, and thus it's probably happening to other MS candidates as well, but since it's so contrary to accepted business practice it might be a service to our industry if MS's recruiting techniques were openly investigated, so that all the other candidates you're in the process of recruiting would know what to expect. Hmmm ...

- Walt

***** CONFIDENTIAL *****

SLEEPLESS IN BOSTON
How Microsoft Raped My Family While Recruiting Me
Jan 24 - Apr 20, 1997

This is the story of the MS recruiting scandal my family and I were subjected to. As my wife so graphically and accurately puts it, "We were raped" (literally -- look it up in Webster's).

Cast of major characters (minor characters are mentioned inline through the narrative):

- Walt Tuvell (OSF) -- Me
- Linda King -- My wife
- Meg MacGougan (MS) -- Senior Technical Recruiter
- Margaret Johnson (MS) -- Supervisor (? -- lost her card)
- Dave Thompson (MS) -- Director, Distributed Systems Infrastructure

On Fri, Jan 24, I visited MS. Nat Brown was my host. I had met

with Nat (and Charlie Kindel, and others) on an earlier visit on Thu, Oct 10 to MS that also included Joe Maloney and Dick Mackey. Upon returning to Boston following the Oct 10 meeting I wrote the following note:

From walt@postman.osf.org Mon Oct 14 12:26:36 1996
Return-Path: walt
From: Walt Tuvell <walt@osf.org>
Date: Mon, 14 Oct 96 12:26:26 -0400
To: ckindel@microsoft.com, natbro@microsoft.com
Cc: walt@osf.org, maloney@osf.org, dmackey@osf.org
Subject: Security briefing
X-UIDL: 422e0c08c012873c18cb89ade6df19cb

Charlie & Nat, thanks for seeing us last week. I think we made really good progress on defining a project.

With this note, I want to reinforce my offer to come back out soon (this week or next) and give an in-depth security briefing about DCE security. You guys (and maybe your security specialists too?) are knowledgeable about DCE 1.0 security, but the follow-on releases 1.1 and 1.2 have major additions which I'd like to talk to you about. The goal is to avoid gratuitous differences if possible.

Additionally, I'd like to talk to you (or somebody you point to) about MS-CAPI. I understand from Joe that some of your CAPI folks are interested in working via OSF to "openize" CAPI, but I don't know the details. I'd like to find out the details, and see where we all want to go from there.

Since today is Columbus day, you may have the day off (I don't), but if you can get back to me by tomorrow that should be soon enough. As Nat mentioned, I think we both want to make sure the window of opportunity doesn't slide by before we've had a chance to talk again.

Cheers.

- Walt

The Jan 24 meeting was Nat's response to this note. My main goal was to sell MS on the idea of using DCE security (either licensing the code, or at least making their implementation compatible with DCE specifications). Nat at one point mumbled something about wanting to recruit me for MS, but that there was something unprofessional/unethical about MS approaching somebody from another company like this (I wasn't exactly sure what that meant: on MS property, during business hours, while conducting official business, or something else?). I mumbled something about me and my wife being east coasters (even though I had lived in Seattle for 3 years in the early 1980's), to which he responded he could understand that since he thought of himself as a west coaster (he was raised in Fairbanks, Alaska, but had attended Harvard, so he had experience living on both coasts). This conversation went no further, and I just shrugged it off as

chit-chat. [Much later, on Apr 16, I called Nat to ask him to be a reference for me (see below), and during that conversation he mentioned that he had talked to Peter, Margaret and Dave about hiring me. This may in fact be the reason I was invited to visit MS on Jan 24 in the first place.]

I spent most of the day on Jan 24 talking to Peter Brundrett MS; for a time (including lunch) Mike Swift joined us; I spent about half an hour with Quinn Carter talking about MS submitting CryptoAPI as a base document to the OpenGroup certificate management specification process; and at one point late in the day I exchanged pleasantries with Margaret Johnson in her office. Peter, Mike and I talked about nothing but technology (NT and DCE security products and plans). In particular, I pointed out to them how the MS Kerberos implementation was broken (didn't meet the IETF RFC 1510 spec), and how the DCE ACL model was better than the NT ACL model. They accepted these criticisms with interest, and I thought they were bright, stimulating people that I enjoyed working with very much. When I talked to Margaret, she thanked me for coming, allowing as how "we [MS] don't get to see people with your level of expertise here very often". I enjoyed that flattery, but I didn't think anything more about it.

On Thu, Feb 13, Margaret called me out of the blue. She asked if MS owed me anything as a followup to my Jan 24 visit. I said No, and in fact it was I who owed MS something (namely a response Peter's minutes of our meeting, which he sent me on Jan 27 — I eventually sent that response to Peter on Feb 23 — nothing earth-shaking, and in fact Peter never responded to it). Then Margaret asked me if I knew of anybody in the industry who would be interested in applying for a position of "security architect" at MS. I said I wasn't sure. She said, "Here, I'll read you the job description." The description was an almost exact description of the job I do as OSF, with the addition of influencing an actual development organization (the one indispensable thing I don't have at OSF). After hemming and hawing back and forth a few times (I was stalling for time, while I was thinking in real time about what I should do about this), I asked, "Would you mind if I expressed an interest in this position?". To which Margaret said in her most breathless and effusive voice, "Oh, in a heartbeat", fairly jumping through the phone as she said so. At that instant it was clear to me that I was the target of her phone call. She in fact confirmed that, as she explained that that (my expression of interest) was what she wanted, but that it was somehow unprofessional/unethical for her to approach me too directly (the same concern Nat had expressed). I also told Margaret that a move to Seattle would be fine with me, and in fact I had lived in Seattle for 3 years in the early 1980's (actually, I might have told Margaret this when I spoke to her on Jan 24, I don't remember for sure), but that Linda would need some convincing because she loved living in Boston and had a feeling of deep-connectedness with it and with her network of friends. Margaret said that was a feeling she was unfamiliar with since she herself was an "Army brat", and that she actually lived in

Winchester (just a couple of towns from Reading, where Linda and I live) for awhile. So Margaret said she'd have a recruiter contact me. [Thus, I was up-front about the need to "convince Linda" to relocate, right from the very beginning (as I had been with Nat, too). It will be seen below how my openness on this point eventually came to be used against me.] I had an appointment with Stephanie Ross (our valued psychotherapist) that evening, and told her about Margaret's phone call. And I also told Linda that evening, of course.

Soon (probably Fri, Feb 14 or Mon, Feb 17) I was contacted (phoned) by Meg. She told me that my whole family, not just me, was invited to come to Seattle for the interview trip. When I expressed surprise at that, Meg said it was because of the high level I was being recruited for, and because this way the recruiting cycle could be shortened by a few weeks if everything went well.

On Tue, Feb 18 I received the following note:

| From cshires@microsoft.com Tue Feb 18 19:48:44 1997
| Return-Path: cshires@microsoft.com
| From: Christina Shires <cshires@microsoft.com>
| To: "walt@osf.org" <walt@osf.org>
| Cc: Christina Shires <cshires@microsoft.com>
| Subject: MS Visit - Walter Tuvell
| Date: Tue, 18 Feb 1997 16:51:01 -0800
| X-Mailer: Microsoft Exchange Server Internet Mail Connector Version 4.0.9
| 94.63
| Encoding: 39 TEXT
| X-UIDL: 13e115d67b6d7aca8841c8e10198cb37

Hi Walter-

My name is Christina Shires. I work with Meg MacGougan in Recruiting at Microsoft. We would like to bring you to Redmond, WA to interview with one of our groups for a full-time position. I am the person who will coordinate your trip to Redmond. It would be helpful if you would respond back to me with the following information:

- * Your full address:
- * Date you would prefer to interview:
- * Date you would prefer to leave your home city:
- * Closest airport to your home:
- * Date you would like to return back home:
- * Would you like to have a rental car while you're here?

Once I hear back from you, I will begin making your arrangements (travel, hotel, rental car, etc.). Microsoft will cover all expenses associated with this trip. I will mail a package of

information to your home address that should answer any questions you might have about the interview process.

Also, it would be helpful if you could send me an online copy of your resume.

Thanks, and I look forward to hearing back from you.

Christina Shires
Recruiting Assistant
Microsoft Corporation

cshires@microsoft.com
206/703-0466

I replied with:

From walt@postman.osf.org Wed Feb 19 10:54:32 1997
Return-Path: walt
From: Walt Tuvell <walt@opengroup.org>
Date: Wed, 19 Feb 97 10:54:20 -0500
To: cshires@microsoft.com
Cc: walt@opengroup.org
In-Reply-To: <c=US%a=_%p=msft%l=RED-103-MSG-970219005101Z-3144@INET-02-IMC\microsoft.com> (message from Christina Shires on Tue, 18 Feb 1997 16:51:01 -0800)
Subject: Re: MS Visit - Walter Tuvell
X-UIDL: 792b6ad8a7ec2226c392cce731048966

> Hi Walter-

Hello, Christina, nice meeting you.

> My name is Christina Shires. I work with Meg MacGougan in
> Recruiting at Microsoft. We would like to bring you to Redmond,
> WA to interview with one of our groups for a full-time position.
> I am the person who will coordinate your trip to Redmond. It
> would be helpful if you would respond back to me with the
> following information;

There are certain of your questions I can't answer just now, for reasons you'll see below. But I've answered what I can, to get the ball rolling. I also have an additional request below for the package you'll be sending.

> * Your full address:

Walter Tuvell
836 Main St.
Reading MA 01867

(Actually, 01867-1713 if you prefer Zip+4.)

> * Date you would prefer to interview:

>

> * Date you would prefer to leave your home city:

>
> * Closest airport to your home:

Logan Int'l (Boston).

> * Date you would like to return back home:

>
> * Would you like to have a rental car while you're here?

Yes (and preferably a mini-van if the whole family comes, see below).

Now, here's why I hesitate to answer the other question yet. When I talked to Meg, she indicated my family (wife + 2 children, ages 7 and 3) were invited to come along too. I didn't sense that in your note, but if it is the case then it will affect the answers I give, as well as the info you need (size of hotel, what kind of hotel, how many plane tickets, etc.). So please let me know.

(BTW, my wife and I are not entirely certain it is necessary for all of us to make the trip, but we'd like to know if that is an option.)

> Once I hear back from you, I will begin making your arrangements
> (travel, hotel, rental car, etc.). Microsoft will cover all
> expenses associated with this trip. I will mail a package of
> information to your home address that should answer any
> questions you might have about the interview process.

Thanks, it will be great to get this package (I lived in Seattle during 1980-83, but my trips back since then indicate the place has changed a lot).

I'm sure I'll have other questions I'll want to ask you later on, but for now it might be helpful if you could include some extra stuff about kids. In particular, we are home-schooling our 7-yr old this year, so any information you have in support of that would be appreciated. (I know much of what we're interested in is local community type stuff -- Suzuki music, art classes, gymnastics classes, kid-friendly museums, home-schooling support groups, etc. -- but you may have something lying around.)

> Also, it would be helpful if you could send me an online copy of
> your resume.

It's currently in troff/postscript and ASCII, but for your consumption I should convert it to Word (6). I'll do that in the next day or two, and send you that.

> Thanks, and I look forward to hearing back from you.

>
> Christina Shires
> Recruiting Assistant
> Microsoft Corporation

>
> cshires@microsoft.com
> 206/703-0466

Thanks!

- Walt

Christina confirmed to me that the whole family was invited, and she asked for the names of family members so she could make the arrangements. I also asked to be put up in the Embassy Suites hotel (Meg had suggested that, since that hotel had a reputation for being kid-friendly). I also polished up my resume (converting it to Word as stated above) and sent it to Christina (in fact, I sent it twice, the second one correcting some minor typos in the first one.). (I did not save copies of these emails.) The rest of the planning for the interview trip went smoothly, and my interview date was set for Fri, Mar 14 (with an additional meeting with one person (I don't know who) on Mon, Mar 17, for whom the Mar 14 date was inconvenient).

Somewhere around this time (I forget the exact date, but the cover letter was dated Thu, Mar 6) I received in the U.S. mail a package from Christina containing some info about MS and the Seattle area, and an employment application form and a confidential disclosure (for proprietary info discussed during the interview cycle), both of which I filled out and carried with me on the interview trip to MS.

On Wed, Mar 12, I sent the following note (the format here is from a MS mail program -- Peter replied to my note with a pleasantry, including my note, but I didn't save my original note myself):

| From: Walt Tuvell [SMTP:walt@opengroup.org]
| Sent: Wednesday, March 12, 1997 12:06 PM
| To: Margaret Johnson; Christina Shires; Peter Brundrett
| Subject: See you soon

| Folks (also Meg, but I don't have her email addr) -

| I look forward to seeing you on Fri. I'll be the one in the
| suit. :-) Seriously, I want to thank you for this opportunity,
| and for the professional way my family's visit has been handled.
| We're all hoping this is a beginning, not just a vacation
| weekend.

| - Walt

Early in the morning of Thu, Mar 13, I had several bouts of diarrhea, and as we drove to the airport and boarded the plane, I also got very achy and profoundly drowsy. When it became clear I was too sick to interview on Fri, I called Christina from the plane, and asked her to postpone my interview to the following Fri, Mar 21. (Since I was attending an OSF meeting in Bellevue on Mon-Thu, Mar 17-20, this was a convenient fall-back

date.) So Christina rescheduled the interview for Mar 21. It was a good thing I cancelled Mar 14, because I was too wobbly that day to do an interview. But the illness turned out to be of the rather typical "24-hour" variety, so I was able to enjoy a nicer weekend in Seattle with my family.

On Mon, Mar 17, Linda and the kids returned to Boston, and I moved from the Embassy Suites to the Hyatt Regency for my OSF meeting. I hooked up with Joe Maloney at the OSF mtg on Thu, Mar 20, and we went to dinner. I told him I was interviewing the following day. He wished me luck, and said to call him the next day after my interview, and we could go to dinner again.

On Fri, Mar 21, I did my interview cycle at MS. It lasted from 11:00am to 8:00pm. I interviewed with Meg, Steve Judd, Margaret (lunch), Peter Brundrett, Paul Leach, at least one other person (maybe two), whose name(s) I forget, Dave (order may not be correct; I never got a hardcopy of the interview schedule, so this is from memory). One of the things Meg asked about was if I had any concerns about relocating, and I said yes I was worried about selling our house in Reading. She mentioned that she herself had an old house that she had remodeled, and I said that was my situation too, namely that we had over-renovated in the expectation that we'd be in Reading for many years, and that we wouldn't be able to recoup our money on those renovations. (More on this below.) In my meeting with Meg (the first of the day), I handed her the completed application form and confidentiality disclosure agreement. I was also carrying with me a recent earnings statement for the purpose of verifying my current salary at OSF, but she never asked for it. On the MS employment application form I had claimed a yearly salary of \$116,000, while the earnings statement showed a weekly salary of \$2,229.34, or a yearly salary of $2229.34 * (365.25 / 7) = \$116,304.66$. I found the interview cycle was tough, but fair. Dave was the last person to interview me, and at the end of his interview I asked him if he could call Joe for me. He did so, and after Joe agreed to go to dinner again, Dave drove me to Joe's building. I called Joe from the foyer, and he came down and we went to dinner. I told him I thought the interview cycle went well. Meg had asked me to call her that evening, no matter how late, to let her know what I thought. I tried calling her from two phones while I was out with Joe, but the call didn't go through. When I got to my hotel at about 11:00pm, I learned that the problem was that I had to dial Meg's number as a long distance number (even though it was in the same 206 area code). So I did that and finally got through to Meg. I apologized for calling her so late, but told her I thought the position was a good match from my point of view, that I thought the interview cycle had gone well, and that's I'd be interested in going on to the next step of the process. She said she'd heard from the interviewers I'd had early in the day, and that they sounded positive, and that she'd contact me on Monday with more information.

On Sun, Mar 23, I returned to Boston, having spent Sat, Mar 22, looking at houses with a real estate agent (Laurie Jorgensen).

Meg didn't contact me on Mon, Mar 24, as she had said she would. I waited until Wed, Mar 26, and then I sent Meg the following note inquiring about my status:

| From walt@postman.osf.org Wed Mar 26 14:04:59 1997
| Return-Path: walt
| From: Walt Tuvell <walt@opengroup.org>
| Date: Wed, 26 Mar 97 14:04:57 -0500
| To: megmac@microsoft.com
| Subject: Just checking
| X-UIDL: f776df8b63ed79d0fe31115c10f7446e

| Hi, Meg. Thanks again for your hospitality. I'll be sending you my voucher shortly.

| Also, I thought I heard you say you hoped to be getting back to me by Mon, but since that hasn't happened maybe I heard wrong. Do you have any thoughts about how long the process might take?

| Cheers.

| -Walt

Meg replied as follows:

| From megmac@microsoft.com Wed Mar 26 14:53:08 1997
| Return-Path: megmac@microsoft.com
| From: Meg MacGougan <megmac@microsoft.com>
| To: "Walt Tuvell" <walt@opengroup.org>
| Subject: RE: Just checking
| Date: Wed, 26 Mar. 1997 11:26:10 -0800
| X-Priority: 3
| X-Mailer: Internet Mail Service (5.0.1457.3)
| X-UIDL: d65e06e8ce8e79f39d821b01d9696e12

| Your interviews went great
| I will call you as soon as I get off the phone, probably around noon my time
| MLM

Meg did then call me that day (Wed, Mar 26), and we had a pleasant, up-beat talk. Meg talked about bringing the family back to Seattle for another look around (especially at the housing situation), and including a dinner with Margaret and Dave and their families. I said I thought that sounded like a great idea. I got the general sense I'd be getting an informal (verbal) or formal (hardcopy) offer Real Soon Now, before making another trip to Seattle (I got that idea from the fact that my whole family had been invited to go out on the interview trip, thus shortening the recruiting cycle -- see above), though Meg didn't say that in so many words. I did ask Meg about the relative timing of the two events (issuing of offer and second trip to Seattle), and she said she viewed them as parallel, thus confirming my impression that MS was trying to cut the recruiting cycle to as short a time as possible. Meg asked for

more documentation regarding the house renovations we'd done, and I promised to get that for her. Linda is the keeper of such info in our household, so I turned to Linda to get the info for me. Linda in turn wanted to first talk to our local real estate broker (actually just a close friend who's in real estate, since we hadn't actually put our house on the market yet), and the contractor who does much of the renovation work for us, to help her come up with accurate numbers.

At this point, the following sequence of email notes took place:

| From walt@postman.osf.org Thu Mar 27 15:12:46 1997
 | Return-Path: walt
 | From: Walt Tuvell <walt@opengroup.org>
 | Date: Thu, 27 Mar 97 15:12:42 -0500
 | To: megmac@microsoft.com
 | Cc: walt@opengroup.org
 | Subject: Info
 | X-UIDL: a89ce24ce369930a7e5f4e5b81b42438

| Meg, I got called into an all-day mtg today, and Suzie (our 3-yr old) is sick, so I wasn't able to send you the info I wanted to (re housing concerns). I'll try to do that tomorrow.

| Concerning another trip to Seattle, it doesn't look like that can happen this week or next. And Linda is taking the kids to see their grandparents in Pittsburgh the week of Apr 21, so that week is out too. So the week of Apr 7 is a possibility. But let's not make any commitments about that just yet. Such a trip might not be necessary for making top-level decisions -- it might only be necessary for actually finding living accommodations, in which case there's no real hurry.

| Hope your foot's feeling better, and the Bulgarian found his/her passport.

| - Walt

(Meg had had a operation on her foot not too long before my interview cycle, and she was still hobbling around on it when I visited her. She told me about the Bulgarian problem when I talked to her on the phone on Wed, Mar 26.)

| From walt@postman.osf.org Fri Mar 28 15:55:03 1997
 | Return-Path: walt
 | From: Walt Tuvell <walt@opengroup.org>
 | Date: Fri, 28 Mar 97 15:55:00 -0500
 | To: megmac@microsoft.com
 | Subject: Another delay
 | X-UIDL: 3f870dc8f5aff89700aacf2e93a06f60

| Hi, Meg. In her characteristic way, Linda has asked a real estate agent here (a personal friend of ours) to help her work up some of the info we want to send you. Since that process probably won't finish today, I'll again have to postpone sending it to you. Sorry, hope this doesn't inconvenience you too much,

or jeopardize my relationship with MS.

On the other hand, I do have another item for you to rule on. As the reality of moving sinks deeper into her mind, Linda is getting some angst about rushing things. In particular, she is worried that she/we may feel time-pressured into finalizing the move prematurely. This could have the effect of terminating her connections/roots here too abruptly for her tastes, and might also cause her/us into choosing a house/community/town out there that we ultimately find unsuitable. So we're wondering how long the transition period can be stretched out? She was wondering if the transition period could last as long as July 1, "1998"? (i.e., after the next school year — Suzie is in nursery school, and even though Eric is home-schooled he takes classes in various programs that are geared to the school year.) I, of course, would be onsite in Redmond as soon as possible, as we discussed. And paradoxically, with the pressure off she may be able to make the move much quicker. (When we moved from NJ to Boston, we did the same model, using 3.5 months. I was very productive during that period — work is a good substitute for companionship when you're lonely.)

(BTW, I have fewer reservations about moving than Linda has, but that's understandable: I freely acknowledge she has a harder job raising a family than I do supporting it.)

Finally, we've talked the situation over with the friends we've planned to go to Cape May with, and they're understanding and would agree to a "buy out". (We would pay them our half of the house rent, and they'd use it to get another house nearer the beach. Linda's going to see them when she takes the kids to Pittsburgh in a few weeks.) So instead of going to Cape May, Linda would bring the kids to Seattle and have some vacation time there instead. Since this would have the effect of helping Linda get more comfortable with the whole transition thing, this solution seems preferable to me. Does it sound doable to you?

- Walt

From walt@postman.osf.org Mon Mar 31 10:11:08 1997

Return-Path: walt

From: Walt Tuvell <walt@opengroup.org>

Date: Mon, 31 Mar 97 10:11:06 -0500

To: megmac@microsoft.com

Subject: Good morning

X-UIDL: 26969269c16fc089855031aadff04f62

Good morning, Meg, I hope you and your family had a good holiday weekend. We did here. (Today's not a holiday for me, maybe it is for you?)

The real estate agent here that Linda is working with (the one I mentioned to you in my last note) was too busy this weekend to work with Linda much (a house closing and a final negotiation, in addition to her own holiday festivities), so the report we want to send you will be delayed at least another day or two.

If this is getting to be a major headache for you, please let me know and we'll send you some partial info asap.

Also, I forgot to mention in my last note that one reason Linda would like to have a non-time-pressured transition period is that she runs a small home business (real estate computing consulting — doesn't make much money, but is essential to her overall well-being), and she would like the time to make her customers comfortable with her move. As another reason, Linda's elderly parents in Pittsburgh have visited us in Boston many times, but they always drove their car. They're too old to drive to Seattle, and they're uncomfortable flying, so will have to be gently reassured that a move to Seattle wouldn't represent an abandoning of them. That reassurance will take some time.

If these concerns I'm raising about moving seem daunting to you, let me reassure you that Linda and I are BOTH quite clear that this opportunity appears to be something we definitely want to do (provided MS really does come through with an offer we want to accept, of course). It's just that our last move (from NJ to Boston in 1989) was very unencumbered compared to this one (no kids, Linda quit her job, close to Pittsburgh, etc.), and that fact has Linda in a tizzy (understandably). Another good sign is that our marriage and family is in a very healthy place, so even though a transition period is not a happy prospect we trust the whole experience will turn out positively in the long run.

BTW, Linda would like to postpone another trip to Seattle until May, unless it is really necessary to make one earlier. The main determinant there is whether we will be able to afford the kind of living situation we want, and we won't have a good idea about that until after we know more details about the MS offer, so she believes another trip at this time would be premature. Does that make sense to you, or are we missing something we should be taking into consideration?

I'm sure you get to see all kinds of cases, so even though this is seeming more complicated than I personally would want, I hope it's not more complicated than you've handled many times before....

Be talking to you.

- Walt

From megmac@microsoft.com Mon Mar 31 12:51:55 1997
Return-Path: megmac@microsoft.com
From: Meg MacGougan <megmac@microsoft.com>
To: "Walt Tuvell" <walt@opengroup.org>
Subject: RE: Good morning
Date: Mon, 31 Mar 1997 09:48:16 -0800
X-Priority: 3
X-Mailer: Internet Mail Service (5.0.1457.3)
X-UIDL: dae9b2b35ee984bf7ecf57c6f8c33b04

Good morning back at you.

I would love to make an offer- my only hang up is wanting to tailor it to your housing needs, that was why I waiting for info from you so I could address those needs.

I understand all the ups and downs of relocating, especially with family- kids and parents in the mix.

I want this to work for you and your family
MLM

From walt@postman.osf.org Mon Mar 31 13:56:50 1997

Return-Path: walt

From: Walt Tuvell <walt@opengroup.org>

Date: Mon, 31 Mar 97 13:56:46 -0500

To: megmac@microsoft.com

In-Reply-To: <412B66FFB27ECF119AE600805FD4B2C002EA7B8C@red-88-msg.dns.micr
osoft.com>. (message from Meg MacGougan on Mon, 31 Mar 1997 09:48:16 -0800)

Subject: RE: Good morning

X-UIDL: ef2064bd9d3bc498f36021ca3f354f2b

> Good morning back at you.

>

> I would love to make an offer- my only hang up is wanting to tailor it to your housing needs, that was why I waiting for info from you so I could address those needs.

Fair enough. We're the bottleneck, and are working on breaking that logjam. (It turns out our real estate friend has yet another closing today, but she knows we place a high premium on her help as soon as possible....)

> I understand all the ups and downs of relocating, especially with family- kids and parents in the mix.

>

> I want this to work for you and your family

That's a relief, thanks.

We've got a snowstorm going here, so I'm going to head home and spend the rest of the day working from there. I'll probably be home tomorrow too, since I'll have to spend the morning digging out from the expected 6-12 inches. Ahh, Seattle - at least rain is easier to dig out from than snow!

-Walt

From walt@postman.osf.org Tue Apr 1 08:32:23 1997

Return-Path: walt

From: Walt Tuvell <walt@opengroup.org>

Date: Tue, 1 Apr 97 08:32:21 -0500

To: megmac@microsoft.com

Subject: Housing info

X-UIDL: d185afccda2f9f3f8741dafc076c491f

Well, God may think an April Fool's Day Blizzard is funny, but

I'm not laughing. Approx 2 ft of snow (depending on distance from the coast), but still falling -- a "historical" snowstorm, one of the 10 worst on record. Even OSF is closed, for the first time ever.

As you may have surmised, I'm a little impatient with our ability on this end to come up with some "official" numbers for our housing situation, so here are some of my personal observations. If these aren't good enough for you let me know, so I can make sure Mary Ann and Linda get together in a day or two (or maybe longer new, due to the blizzard).

There are two parts to the equation as I see it: The value of our current house, and the value of "equivalent" housing in the Seattle area. I'll spend most of my time describing our current situation so you'll know exactly what I'm talking about, with the implication that we'd like to duplicate it as much as possible in Seattle (even though we know it won't be entirely possible). [What I give here includes a "shallow" financial analysis, i.e., back-of-the-envelope guesses; if you want a "deep" analysis (renovated vs. unrenovated evaluations, or more careful estimates for individual features, etc.), that may be the sort of thing Mary Anne and Linda can come up with.]

We bought our current house in 1989 for \$237.5K. I'm guessing it would fetch about \$260K (in its current renovated state) in today's market (Mary Anne can give a more authoritative estimate), but it's worth more than that to us because we knowingly over-developed it (~60K, if you include value of "sweat equity" in addition to all the paid contractors), believing we would be here for many more years. Here are the salient facts:

0.5 acre wooded hilly lot, surrounded by antique stone walls (trees provide privacy; house sits on crest, overlooking all surroundings)

Interior of lot terraced, with antique stone walls enclosing picnic area

0.5 mile from small town center, shopping, library, schools, churches

Friendly, quiet neighborhood (cemetery 1 block away)

Located on double corner (streets on 3 sides, set back from traffic and neighbors)

House dates from 1850's, Greek Revival, lots of individual New England character (we don't like cookie-cutter look); solid

Multi-level roof, half newly re-roofed

~3000 sq ft living space, in long/narrow layout (easy for family members to get away from one another, e.g., kids in family room, adults at opposite end of house in living room)

Full basement and full attic, unfinished (tons of storage space; attic suitable for finishing, a future plan of ours)

Original wide-plank pine floors throughout (we don't like wall-to-wall carpeting) (exception: family room is 1950's addition, carpeted)

Upstairs: 4 bedrooms, bathroom, sitting room, 2 hallways, room-closet plus built-in closets and drawers (approx half of these refurbished -- new plaster walls and ceiling, insulated, wallpaper, floors refinished)

Downstairs: Living room (refurbished as above, with dramatic floor-to-ceiling windows and new ceiling lights illuminating wall above fireplace mantel, suitable for work of art), dining room (refurbished; new built-in china closet), fireplace between living and dining rooms (refurbished, with new mantels and new built-in bookcase next to it, and especially newly double-sided, my favorite innovation), gourmet kitchen (huge but not yet refurbished -- that was supposed to happen next winter), new conservatory (a.k.a. sunroom, flush with rest of house, not a wart on the side; new handmade tile floor, patterned; designed to open out onto deck, which we're committed to adding this summer [building inspector OK'd sunroom conditionally on adding deck]), very large vaulted and beamed family room (incl closet), mudroom/laundryroom (refurbished, with new California-style closet and some cabinets), office with built-in bookcase, bathroom, front entrance, hallway (incl closet)

4 stairwells (one refurbished)

3 ceiling fans (living room, family room, sunroom, 2 of them new)

New furnace (high-efficiency top-of-line Lenox, gas, forced air; old furnace was oil, yuk)

New electrical work (rewiring, new outlets, etc.)

Sagging floors newly relevelled

New custom woodwork (fireplace mantels, living room ceiling molding, living room and dining room door moldings, half-wall mantel between dining room and sunroom, dining room chair rail)

New alarm system

Huge new wooden playset (twin towers connected by walkway with tire swing, slide, etc., and separate swingset with 3 regular swings and glider swing -- erected by Yours Truly)

Garden shed

BTW, we refinanced a few years ago to get 15-yr 6.875% (fixed) mortgage, with current balance of \$130K and monthly payments of \$1.5K. We're comfortable with that, and don't want to become "house poor".

I spent a day with a real estate lady in Seattle, looking at housing in the \$300-350K range, and wasn't very impressed (i.e., didn't see anything remotely "equivalent" to what I've described above). On that basis, I'm guessing we're going to have to go into the \$375-400K range to find something like what we have here. That's quite a gap, unfortunately.

| - Walt

/* Following note is in MS mailer format -- I didn't save original. */

| From: Walt Tuvell [SMTP:walt@opengroup.org]
| Sent: Wednesday, April 02, 1997 7:35 AM
| To: Meg MacGougan
| Subject: Acknowledgement request

| Meg, I got a message from the Microsoft mailer saying it was having trouble delivering the note I sent you yesterday. Did you receive it? In case you didn't, I'm including another copy below. (BTW, I'm at work today, if you feel like talking.)

| - Walt

/* Copy of earlier note not included here. */

| From: megmac@microsoft.com Wed Apr 2 23:04:49 1997
| Return-Path: megmac@microsoft.com
| From: Meg MacGougan <megmac@microsoft.com>
| To: "Walt Tuvell" <walt@opengroup.org>
| Subject: RE: Acknowledgement request
| Date: Wed, 2 Apr 1997 20:04:14 -0800
| X-Priority: 3
| X-Mailer: Internet Mail Service (5.0.1457.3)
| X-UIDL: 78e6c5a8b781c7373aa05843f0221b53

| Yes I did get it

| I apologize for not getting back sooner, I had a situation blow up and played firefighter all day.

| I have been thinking a lot about you and your family and your house. We may not be able to duplicate exactly what you have there, we do have wonderful old communities with houses from the early 1900's that are delightful. The look and feel will be different. I am very anxious to get your wife here again so she can see what our older neighborhoods and communities look like.

| MLM

| I did not get this piece of mail until tonight at 8PM my time.....

| From walt@postman.osf.org Thu Apr 3 07:35:39 1997
| Return-Path: walt
| From: Walt Tuvell <walt@opengroup.org>
| Date: Thu, 3 Apr 97 07:35:37 -0500
| To: megmac@microsoft.com
| In-Reply-To: <412B66FFB27ECF119AE600805FD4B2C002F786E3@red-88-msg.dns.micr
| osoft.com> (message from Meg MacGougan on Wed, 2 Apr 1997 20:04:14 -0800)
| Subject: RE: Acknowledgement request
| X-UIDL: 4d63c2cf0c2c5540473d38c01026838f

| > I apologize for not getting back sooner, I had a situation blow up and
| > played firefighter all day.

No problem, I know how that goes.

> I have been thinking a lot about you and your family and your house. We
> may not be able to duplicate exactly what you have there, we do have
> wonderful old communities with houses from the early 1900's that are
> delightful. The look and feel will be different. I am very anxious to
> get your wife here again to she can see what our older neighborhoods and
> communities look like.

Right, I didn't get to see those with the real estate agent, so
I think it would be a good idea to take another look. Let me
run it by Linda to see if we can find a good date (maybe next
week?), and I'll get back to you.

As I've said to you earlier, my list of "concerns" about the
housing situation was not meant to be a set of drop-dead
conditions. The same goes for the money figures I mentioned
(which are just guidelines after all, and are secondary to the
main concern, which is the housing situation itself). I listed
the concerns for you so we could work our way through them to a
successful conclusion, and that's exactly what I remain hopeful
we'll be able to do.

[BTW, we know this whole process would be much easier if we went
back to being a 2-income family, but we want to resist that
thought while our kids are in their prime child-rearing years.]

> I did not get this piece of mail until tonight at 8PM my time.....

Get a life ... :-)

- Walt

From walt@postman.osf.org Fri Apr 4 09:35:34 1997

Return-Path: walt

From: Walt Tuvell <walt@opengroup.org>

Date: Fri, 4 Apr 97 09:35:31 -0500

To: megmac@microsoft.com

Subject: Making definite plans

X-UIDL: dec2eabe3be910ed52ca52451caaffcc

Meg, Linda and I talked it over some more, and we have a
suggestion for making some definite plans. We think we'd like
to come to Seattle this Sunday, returning to Boston on Thursday.
In case you're agreeable to this plan, here are the details for
you to pass on to Christina:

Boston -> Seattle: Sun Apr 6, Northwest #83

Seattle -> Boston: Thu Apr 10, Northwest #82

2 Adults: Walter Tuvell, Linda King

2 Children: Eric Tuvell (7), Susan Tuvell (3)

Car: Minivan (with integral child seats)

Hotel: Downtown Seattle (I've used the Four Seasons on
business, do you do that? We stayed in the
Bellevue Embassy Suites last time, and it was

fine, but we want to try something different
this time.)

Concerning the babysitting logistics, we should continue to work on that today (licensed/bonded sitters, local church or La Leche League, other things you might come up with). But as I mentioned last night, we can always take the kids with us on the house-hunting trips. However we do it, I trust we'll manage to get a better idea about the housing situation than we have now.

Concerning the real estate agent to use, we should talk about that. Since Linda hasn't met the agent I used last time (Laurie Jorgensen, Re/Max), it might be best to use her first so Linda can determine firsthand if she's somebody we think we can work with long term. However, this is certainly something we can talk to you about.

I'm at OSF as I write this, but I plan to go home early today to help Linda do some things at home. When you feel like calling today, you should probably call at home.

And, thanks for everything.

- Walt

Meg then called me (Fri, Apr 4) and said she agreed to the travel proposal, and would pass the travel info on to Christina. However, Christina called later Fri evening, saying she hadn't been able to make all the reservations in time, and asked me for alternate dates. I spoke it over with Linda, and we agreed on Thu, Apr 10 to Mon, Apr 14. Christina said she'd make the arrangements.

Somewhere along in here (I forget the exact day), Christina called to confirm that she'd been able to make the reservations. She also offered to put us up in the Safish Lodge, which is an extremely nice tourist hotel (making it clear we were being given real Red Carpet treatment here), but instead we opted for the Hyatt Regency because of its better proximity to a swimming pool (which Linda likes to use in the mornings). Christina also informed me that we had a 9:00am meeting with Meg on Fri, Apr 11, and a dinner party at Dave's house at 6:00pm on Fri evening.

On Mon, Apr 7, Margaret called me, and asked where I was. She thought I was going to be in Seattle on the earlier proposed dates (apparently Meg and/or Christina hadn't told her of the change in plans). I told her the new dates. I also told Margaret of my concern that, even though Meg had said the offer and trip were being done in parallel, I hadn't yet received an offer. Margaret said that was because I still owed Meg some information on the housing situation. I then told her that there must have been a disconnect in communications, namely that I had told Meg in my note of Apr 1 (see above) that if she (Meg) didn't think my "unofficial" figures weren't good enough for her, to let me know, but Meg never let me know that. I said I'd call Meg and work out this disconnect, and Margaret said "You'll

have your offer by then (i.e., by the time I traveled to Seattle)". She did not distinguish between "verbal" or "formal" offer, she just said "offer", indicating to me that there was no difference between the two in her eyes, or that if there were a difference they were equally binding, thereby addressing my concern.

So I did then call Meg (Mon, Apr 7), and told her that I had talked to Linda, and that the "unofficial" figures I had given her was indeed correct, so she could go ahead and work with those figures. I left that message with Meg's answering machine, but Meg called me back confirming it, and said she'd work with those figures.

The next email happened on Wed, Apr 9:

/* Following note is in MS mailer format -- I didn't save original. */

| From: Walt Tuvell [SMTP:walt@opengroup.org]
| Sent: Wednesday, April 09, 1997 9:16 AM
| To: Margaret Johnson
| Subject: Dress code for Fri

| Margaret, Linda (my wife) wants me to ask you what the dress code for Fri is. Can we assume that something fairly informal, along the lines of "business casual", is in order?

| We're looking forward to it. I'll bring a bottle of wine (even though you may not want to partake, because of your pregnancy, which I hope is going well).

| - Walt

| From margretj@microsoft.com Wed Apr 9 14:14:49 1997
| Return-Path: margretj@microsoft.com
| From: Margaret Johnson <margretj@microsoft.com>
| To: "Walt Tuvell" <walt@opengroup.org>
| Subject: RE: Dress code for Fri
| Date: Wed, 9 Apr 1997 11:14:10 -0700
| X-Priority: 3
| X-Mailer: Internet Mail Service (5.0.1458.8)
| X-UIDL: 8493ac3428938a13135f99b2e3e0d0c3

| Hi Walt,
| Dress code is extremely casual. All is going well. Looking forward to meeting your family.

| Thanks.

I responded to this note, saying something like "Linda would be more comfortable on a first date being a little less informal than jeans, so I would probably be in Dockers", however I didn't save a copy of that note. [I did have Dockers with me, but the day was rushed (see below) and I never had a chance to change into them, so I ended up going to the party in jeans after all.]

In the evening of Wed, Apr 9, Meg called me, and said she had completed her initial offer, and that she could either give it to me over the phone or could wait to give it to me in person at our meeting on Fri morning. I said I'd rather have it over the phone, so I could think about it, and so that we could our real estate agent in Seattle to inform her what price range she should be looking at for us. Thereupon, Meg read me the terms of the verbal offer, which were as follows (I wrote it down as I talked to Meg, and talked to Linda about it immediately after the phone call):

Salary: \$90,500/yr, with yearly merit raises (MS average = 8%).

Personal Performance Bonus: 0-15% (average = 10%), depending on management review, every 6 months, of previous 6 months earnings (salary).

Stock Options: 4800 to begin with, at lowest quotation during first 30 days as employee. Then, every Aug, eligible for an additional 4800 options, depending on management review (average = 50%, or 2400 in my case). These options vest at a rate of 1/8 the first year, thereafter 1/8 every 6 months (so that full vesting occurred at 4.5 yrs), up to 7 years, at which time employee must make a decision to buy or sell.

Relocation Allowance: \$40,000 grossed up, plus closing costs on both houses.

Signing Bonus: \$25,000 (not grossed up).

Discretionary Relocation Allowance: \$10,000 grossed up.

Resettlement Allowance: \$3,000 (not grossed up).

Employee Stock Purchase Plan: Up to 10% of paycheck, at 85% of 6 month low, post-tax dollars.

401k: Up to 15%, MS matches up to 6%, pre-tax dollars, 2 yr vesting period.

Insurances of the usual flavors.

Health club benefits, with family discount.

(2 weeks vacation - I didn't learn this until the Apr 11 meeting with Meg)

Matching plan for donating software to schools.

1 or 2 moves (i.e., either the whole family moves at once, or I move first and the rest of the family follows later), at my option.

60 days furnished temporary housing and/or storage during transition period, as needed. (Meg mentioned that 30 days was standard; see below for negotiations about extending this to 18 months.)

2 trips during transition period (Meg initially said 1 trip, but I asked for 2, and she promptly agreed).

While were on the phone, Meg launched a spreadsheet and read off some figures to give me some idea of how the stock options kicked in over time to overwhelm the "low" salary. The figures she quoted me (assuming a very conservative 10% growth rate of stock, as she said) were: 1st yr \$122K, 2nd yr \$116K, 3rd yr \$115K, 4th yr \$230K, 5th yr \$335K. She mentioned that the stock options so overwhelmed the salary for long-term employees, that they were jokingly called "volunteers" because they need not

depend on their salary for their livelihood. I did not, in fact, understand the stock option stuff, and neither did Linda, so that was one of the two main things we asked Meg about when we met with her on Fri morning (the other being extending the transition period to 18 months).

Later that evening (Wed, Apr 9), Linda and I called our real estate agent, Laurie, in Seattle and gave her the info in the verbal offer. She didn't have experience dealing with MS relocatees. Meg had told me, while she was reading me the verbal offer, to work with a real estate agent who had experience with MS relocatees, in particular how to interpret the 3-part compensation package (salary/bonus/options) as it applies to net worth and cash flow, particularly with regard to a 5/4/3/2/1 buy-down as opposed to a one-time down-payment. I told this to Laurie, and she said she'd call a financial person she worked extensively with for help. She did so, and he called us later the same evening. He did have experience with the MS compensation package, and on the phone he worked out some figures for us. His conclusion was that the maximum we'd be qualified for was a \$425,000 loan. We thanked him for this info, because we knew it was more than enough for us to find the kind of a house we wanted.

On Thu, Apr 10, my family flew to Seattle. On the flight there, I called Joe Maloney in his office and left a message asking if he'd like to go out to dinner that night. When we checked in at the Hyatt (where we found a "fruit basket", actually mostly candies, from MS), we found Joe had left a message saying he would like to go to dinner, so I called him after we got settled into our rooms and set a dinner date for 6:30pm. We picked up Joe at his office at 6:30, and cruised around for a restaurant. We ended up at a pasta place in downtown Kirkland. Linda and the kids got tired early because of the timezone change, so they took a taxi back to the hotel while Joe and I lingered over dinner. Then I took Joe back to his office, and I went back to the hotel myself.

On Fri, Apr 11, after I went running and Linda went swimming, my family drove to the MS campus for our scheduled meeting with Meg at 9:00am. On the way into Meg's office, I dropped off the Expense report for our previous trip to Seattle in Christina's office. Suzie was sleeping in my arms as we went into Meg's office, and we set Eric to work on a computer game to keep him occupied while we talked business. Meg said she had a formal offer she'd like to give me, except for the fact that there was some clause in it that MS only infrequently exercised in the way they were doing for me (I think she said it was the \$40,000 relocation allowance), so the way it was written up had been flagged by their lawyers so it had to be rewritten. Then she asked if had any questions about the offer as it had been given to me over the phone on Wed. We first asked for an explanation of the stock options, since we weren't familiar with that. After Meg finished her explanation of stock options to our satisfaction, I said that I was then satisfied with the offer, excepting only the length of time allowed for the transition

period. After a little discussion, mostly with Linda who explained her home business situation, Meg agreed to extend the transition period to 18 months. Sometime during this discussion, Meg was talking to Linda and saying something like, "When a candidate comes in at a high level ...", and she turned to me and said, "You do know you're coming in at a very high level, don't you?", and she explained that while there was still some room for advancement it would be pretty hard because at the next level up included only people who contributed very substantially to MS's bottom line revenues. I said, "Yes, I figured that out, and I'm not going to nickel and dime you to death on this offer, we only want to reconsider the transition period." Also somewhere in the midst of all these discussions, Christina came in and told us what child care arrangements she had been able to make for us (Kindercare on Fri, sitter on Sat and Sun). Also at some point Linda mentioned to Meg that, "This year is Walt's 50th birthday"; I cringed a little thinking this was getting a little too personal/familiar, but realizing that my age was known (or calculatable) from my resume, so everybody at MS knew it already. After these discussions, Meg asked when I could start working, and I said I'd have to check my calendar but I thought early May was when I could start. Meg said, "Great." By the time we were ready to leave Meg's office Suzie had woken up, and Meg gave Eric and Suzie little bags of candy. In the hallway as we were leaving, I asked Meg, "What's the next step? Will you send me the formal offer in the mail next week?" Meg said yes.

We left Meg's office and returned to the Hyatt, where we picked up Laurie Jorgensen. We then dropped by Kindercare to drop off our kids, and then Linda and I spent the rest of the afternoon looking at houses in Seattle proper. It wasn't a very fruitful search, and towards the end I was getting pretty uptight because I wanted to get back to our hotel rooms in plenty of time to relax and compose ourselves for the evening dinner at Dave's house (which I recognized as an important "family interview").

Late in the afternoon we returned to the Hyatt and dropped Laurie off so she could pick her car up in the Hyatt parking lot and run off to other business she had that evening. Then Linda and I drove to Kindercare to pick up Eric and Suzie. We found Eric immediately, but Suzie was not in her assigned room. This was moderately alarming, since the teacher in that room was supposed to know where Suzie was at all times. So we started searching room by room and on the grounds for Suzie, but it took several circuits and nearly 10 minutes to finally find her (it turned out she had been walking around with another teacher, searching for a favorite teacher she had met that day, while that teacher was walking around with us looking for Suzie). Since we were already pretty frazzled before we even went to Kindercare, this was a pretty tense time. Kindercare apologized profusely for the concern this caused us.

Arriving finally back at the Hyatt, we let the kids run around outside on the sidewalk for a few minutes, then Margaret showed up with her family in their van. We got into our van and

followed them to Dave's house. The dinner at Dave's house was an elegant, catered affair. Very soon after arriving, Dave asked me and Linda how the house hunting had gone that day. Since it hadn't gone very well, and since we were exhausted from jetlag and running around all day and especially from the incident with Suzle at Kindercare, Linda teared up and dashed off to the bathroom saying, "I'll be right back." I immediately put down my drink and said "I'll be right back", and followed her into the bathroom. I asked if she was all right or wanted to go back to the Hyatt or what, and she said she'd be all right and I should just leave her alone for a few minutes and go back to our hosts. So I comforted her for another minute or so and then went back out. Dave immediately started expressing his apologies, which I assured him were unnecessary. After a minute Dave and I walked out the backyard, talking about various pleasantries. Pretty soon Dave asked me if there were any remaining issues with the offer, and I said at this point there were none. I told him that going into the meeting with Meg the only clause we questioned was the transition period, so when Meg lengthened it to 18 months there were no remaining issues. Dave asked me when I could start, and I again said early May depending on my commitments which I still needed to check. (I knew I had penciled in a meeting in New York the week of May 5, but that hadn't been definitively scheduled yet.) Linda recovered nicely from her crying episode, and returned to the party. From that point on the party was without incident, and everybody had a really good time. As we were leaving, Dave was again saying how glad he was I was coming onboard, and his parting words were, while giving me a warm handshake, "We'll be seeing you", and I completed his sentence with "Soon", then released the handshake. On the way home Linda and I talked about how the evening had gone. I assured Linda that I didn't think her cry caused any trouble at all, other than genuine concern about her.

On Sat, Apr 12, the babysitter showed up at the Hyatt, and 5 of us went house hunting on the Eastside. This went much better than the previous day in Seattle. We exhausted the list of houses Laurie had made up for us, so we decided to cancel the house hunting for Sunday.

On Sun, Apr 13, the family went to the Pacific Science Center.

On Mon, Apr 14, the family flew back to Boston. At the airport we ran into Michael Gross (OSF), who had also been in Seattle that weekend for his acceptance trip (he'll be working for Joe Maloney), and our two families sat together on the airplane. We got home late at night and crashed into bed.

On Tue, Apr 15, very early in the morning ("middle of the night"), I couldn't sleep, so I decided to log in to read my email. I found this message:

| From: megmacc@microsoft.com Mon Apr 14 19:49:37 1997.
 | Return-Path: megmacc@microsoft.com
 | From: Meg MacGougan <megmac@microsoft.com>

| To: "Walt Tuvell" <walt@opengroup.org>
 | Subject: Let's talk
 | Date: Mon, 14 Apr 1997 15:55:37 -0700
 | X-Priority: 3
 | X-Mailer: Internet Mail Service (5.0.1458.8)
 | X-UIDL: 6b3a7fbbb6d376ae5ebc3bbe1f8f4a51

| When will you be at work tomorrow?
 | I would like to speak with you.
 | MLM

I responded to Meg, saying, "Hmm, that sounds ominous", and that I'd give her a call during working hours (I didn't save a copy of this message). Actually, I didn't really think any really bad news would be forthcoming (perhaps just a glitch in extending the transition period to 18 months), just that she had used some odd, terse language in her note. Then I went back to bed. After Linda and I woke up at a normal time, Linda went off to a session with Stephanie, and I called Meg. Meg informed me that the formal offer she had told me she would send this week would not be sent after all -- that the offer was in fact being withdrawn. I was absolutely stunned, to put it mildly -- this was an unbelievable, catastrophic turn of events. Meg explained that the reason for the withdrawal was that my family didn't seem ready to make the move to Seattle, and she explained that MS was interested in keeping my family unit happy. Meg also explained that MS had had some experiences in the past with long transition periods that sometimes didn't work out (this was the first time she had expressed any such reservations). I tried to get more information from Meg, but it was not forthcoming. I said that if Linda's crying at the party was part of this decision, then I was sure it was being blown all out of proportion -- that while the move to Seattle was hard for Linda (and we had never tried to hide that), she was treating it as a personal challenge she wanted to work through, and that she had talked to Stephanie a number of times about it and was in fact doing so at that very moment (and then I corrected myself to say that she had just ended her session with Stephanie, since the time was then 11:03am). Meg thanked me for being "candid" [boy, does that ever turn out to be ironic in light of subsequent events]. (For more on this talk with Meg, see below.) After this conversation with Meg, I walked around the house for awhile in a stupor. Then I had the idea to call Stephanie (I had never done so in the past, but since I had just mentioned her on the phone with Meg she was on my mind). I called Stephanie, telling her I needed help in how to deal with this. She told me she would help in any way possible, and in particular she told me that when Linda came home that I should just tell Linda the bare facts and not take any of my anger out on her, and have Linda call Stephanie. After the talk with Stephanie, since I had planned to go running that morning, I went ahead and changed into my running clothes and started stretching. Linda arrived back from her session with Stephanie, and came to me excited about some ideas she had about housing in Seattle/Eastside, but she took one look at me and said, "You look like shit". I told her that Meg had rescinded the offer, and the reason, and asked

her to call Stephanie. That stunned Linda as much as it had stunned me, and she started walking around hysterically saying "No, no, no" at least a dozen times. I then went running, and about 20 minutes into the run I started to become "centered". I immediately fixated on the thought that "the core value here is my family, not my career", and focusing on that helped me become more and more calm about the situation. By the time I returned home I was still very agitated but I knew I had regained enough composure to start dealing with the situation (a process that would consume Linda and I for many days to come, of course, and we're still not done with it). I spent the rest of the day analyzing in excruciating detail what could have gone wrong during the Seattle trip, and I finally ended up composing the following letter:

From: walt@postman.osf.org Tue Apr 15 17:59:30 1997.
 Return-Path: walt
 From: Walt Tuvell <walt@opengroup.org>
 Date: Tue, 15 Apr 97 17:59:27 -0400
 To: megmac@microsoft.com
 Cc: walt@opengroup.org, margretj@microsoft.com,
 daveth@microsoft.com, llkforms@aol.com
 Subject: Our talk this morning
 X-UIDL: 70e908f48709feBa01870ed1b8fda1b1

Hi again, Meg. Well, that wasn't exactly the phone call I was expecting, so I'd like to write down some notes about it to make sure I understand the state of the world. I've copied the other principals as well, so that if anyone has a different understanding they can share it. ("llkforms" = Linda Lee King, whose work involves forms-based applications for real estate offices.) This letter is necessarily a long and wordy one -- that is unfortunately the nature of the topic at hand.

I particularly want to focus on two events that appear to be pivotal: (1) the negotiated transition period, and (2) Linda's reaction to Dave's question about how the househunting had gone.

(1) Last Wed evening, you informed me of what your initial offer might look like. When Linda and I met with you on Fri morning, we expressed our general satisfaction with it, and in fact there was only a single clause that we wanted to reconsider: the length of the transition period (i.e., the period between my start date and the completion of the family's move to the Redmond area). Your position was 2 months, which we thought was too short. When we moved from NJ to Boston, we took 3.5 months which worked very well for us, so we have some experience in such matters. I said that with such a short transition period, I would probably want to delay my start date (I wasn't asked to quantify that, but I minimally had in mind letting Suzie finish her pre-school year). You then suggested 6-8 months (I hope my recollection isn't faulty about that figure), and I countered with "until next summer", at which point Linda and I gave some rationale for this (finding a new pre-school, church, Campfire group, etc.; Linda's business; my intense immersion coming up to speed in a new environment; etc.). You appeared to be satisfied

with that rationale, because you then offered 18 months, and we said that would be more than enough. You also asked what my start date would be under such an arrangement, and I said early May (pending a check of the calendar). It was my impression (and Linda's, too) that you didn't fight to keep the transition period shorter, so we didn't have any inkling that it would cause any trouble. In particular, you mentioned that the transition would cost MS about \$3K/month, but that you could "do something about that" (which I interpreted as something like letting me rent my own apartment instead of using MS housing, then reimbursing me later). Had we thought it would cause trouble, we would have backed off our negotiating position, of course (that's the nature of negotiations). We also said that once I started at MS, Linda and I would both have a clear motivation to complete the transition much sooner than 18 months -- a motivation that didn't exist in the present abstract negotiation state, and which would be enhanced by the absence of time-pressure that the 18 month deadline would afford.

(2) After leaving your office, we spent the day looking at houses in Seattle proper with our real estate agent. The houses we saw were unencouraging for a variety of reasons (commuting time; too "city", both in architecture and neighborhood; too costly because of institutionalized "bidding wars" -- a phenomenon we'd never heard of before; etc.). Since, as you know, the housing situation is one of our main concerns, this left us in a vulnerable emotional state. Recognizing this, I had wanted to spend an hour or so before the party in our hotel, recovering from sticker shock and relaxing before the evening. However, that hour never materialized, due to the length of the house-hunting foray, and the fact that we had to rush around depositing and picking up our children from Kindercare several miles away (and the fact that Kindercare had lost Suzie (II) and we had to hunt for her for upwards of 10 minutes -- they apologized profusely for it, but it put our nerves even further over the edge). We had barely 5 minutes rest time before Margaret's van pulled up. So when Dave asked Linda how the househunting had gone, he inadvertently pushed the one hot button that was guaranteed to generate an unhelpful reaction. Poor Dave! He apologized (though no apology was necessary), and I did my best to reassure him that it was a "no fault"

situation, and Linda later expressed to me her concern about his feelings as well. As I also said to Dave, and Linda reaffirmed to me, her reaction was just "part of the process", not an indication of an inability to successfully work through the process: there is a large opportunity for misinterpretation on this score. In fact, we saw some much more encouraging housing on the Eastside on Sat, and had the party been held that day Dave's question would have received a very different reaction.

That completes my notes on the two (conjecturally) pivotal events. If anyone has anything to add, please do so.

That brings me to this morning's phone call. Meg withdrew (or rather, "declined to formally issue") the offer, on the basis that "it might not be the best thing for (y)our family at the

present time" (I think these were her actual words). I have to ask the next question: IS THIS REALLY THE REASON, AND IF SO IS IT BASED ON THE ABOVE TWO PIVOTAL EVENTS? Or is there some subtext I don't know about? (Such as, a better candidate has happened along, or I brought a bottle of red wine to a fish dinner, whatever.) If this really is the reason, then I believe there is room for further discussion. If it isn't the reason, then I guess no further discussion is necessary unless MS wants to clue me in on the real reason.

Hearing your words, Meg, I immediately expressed my hope that this was not a unilateral decision -- that Linda and I would be given an opportunity to further discuss our point of view. In fact, I actually engaged in some further discussion with you online, though it fell on only one of the 5 pairs of ears that need to be involved. I won't repeat any of that discussion here -- I hope there will be a more appropriate time and place to do that later. At the end of our phone call, I said I'd go back and talk to Linda about our discussion, and I asked you to go back to Dave and Margaret. You agreed to do that. You also mentioned that we might be able to restart the process in a year or so, and I said I thought it could happen a lot sooner than that (like now), provided that some perceptions could be proved to be either misperceptions or else of less import than first thought. In particular, I said I'd like to call you again next week or the week after, and see where we stood. You were non-committal about anything happening beyond that, but I believe you will at least be expecting to hear from me, so I will call you.

Is there anything else anyone wants to add? Am I doing anything wrong, or is there anything else I should be doing? As I said to Meg, I'm sure Linda and I really want to do this, and we hope we can convince you folks to give us another try. This may well take the form of another face-to-face, but if you want to try teleconferencing or videoconferencing or something else, we'd be game for that.

- Walt

PS. I had hoped I would be writing you all a happier, shorter letter today, thanking you for your hospitality, congratulating you on having such nice families, etc. I really do feel those things, and I hope you'll accept my heartfelt thanks on those scores. I'm really sorry this unfortunate event has impinged on an otherwise very enjoyable experience. I just hope it's not final, because I know it's not correct.

After I mailed this message I also mailed a copy to Joe Maloney, and I called him later in the evening (actually, I left a voice mail message because Joe was in a meeting with Nat Brown, and Joe called me back). Joe was very surprised at the turn of events, but figured some small glitch had disturbed the process and that it could be turned around. I asked him if I could use him as a personal reference, and he agreed. He pointed out that since he was new at MS and wasn't yet a known quantity, and

didn't know the principals involved (Meg, Margaret, Dave), that he needed a way to establish his credibility. He pointed out that his boss, Cornelius Willis, was well-known within MS and could vouch that Joe would "tell it like it is". However, Cornelius knows me only slightly. One of us then suggested Nat Brown as someone who could help out as an "introducer". I said I'd contact Nat and see if he'd be willing to act in that role.

When Linda received a copy of my note she forwarded it to a friend of ours (Cheryl) in Pittsburgh, saying it looked like we weren't going to be moving to Seattle after all (the friend loved Seattle). When Cheryl responded a day or two later that it was too bad we weren't going to be moving to Seattle, Linda asked her why she would be saying such a thing, and Cheryl returned a copy of Linda's earlier note to demonstrate why she would say that. Linda then realized that she had been so distraught that she didn't remember why she had sent the earlier note to Cheryl -- or even that she had done it!

On Wed, Apr 16, Linda sent the following note:

| From LLKforms@aol.com Wed Apr 16 12:15:50 1997
| Return-Path: LLKforms@aol.com
| From: LLKforms@aol.com
| Date: Wed, 16 Apr 1997 12:15:45 -0400 (EDT)
| To: walt@opengroup.org, megmac@microsoft.com
| cc: margretj@microsoft.com, daveth@microsoft.com
| Subject: Re: Our talk this morning
| X-UIDL: 703c64c09f3e60ad7303c84d29535603

Dear Meg:

I would like to add my two-cents worth regarding the rescinding of the offer.

As you know, it will be hard for me to leave my friends and home here in Boston. However, after we met with you on Friday, I was feeling pretty positive about the terms of the offer, and the opportunity for Walt. Everything seemed just about perfect, and Walt and I were really "psyched".

Saturday was a hard day. Looking for houses in Seattle was fairly depressing, especially with the prospect of "bidding wars". Then, of course, was the whole thing with KinderCare "losing" Susan.

Naturally, there have been highs and lows about this whole thing, and by Friday evening, it was sinking in that this was for real. Everything was looking good for the acceptance, and it was just a matter of time until I said goodbye to my life out here in Beantown. Dave's question about the housing market came just as I was feeling some sadness about the change (darned inopportune moment for the feelings), so he may have misread what was going on for me.

Anyway, I went into the bathroom and had myself a good cry and

felt fine after that. I had a wonderful evening and really enjoyed Dave's and Margaret's families. Saturday's househunting went better than Friday's, and I saw a few houses that I actually LIKED (even though they weren't old and charming - they did have some nice amenities I don't have now). They were in subdivisions, to be sure, and I'm not a subdivision person, and I'd prefer to live outside of a subdivision, however, I'm a "when life gives you lemons, make lemonade" sort of person, so I was looking for the good parts about subdivision living.

Sunday, we went to a service at the Unitarian Universalist Church of Woodinville (I'm a member of our UU church in Reading and find it a great source of friendship and networking). We stood up during the "Sharing of Joys and Concerns" and told them of our impending move. Several people came right up to us after the service and introduced themselves. Most of them had been transplanted to the Eastside from another part of the country and knew exactly how it felt to pull up stakes. I was impressed by not only the people but the programs the church offered.

Sunday afternoon we went to the Pacific Science Center, where I inquired about membership. The kids (all four of us) really enjoyed the Center - it was our second visit there.

Monday, there was a woman on our plane from Bothell, one of the two towns that I really liked out there. I was talking to her about my reluctance to live in a subdivision, and she assured me that there are places "right in" town, but it takes diligence and patience to find them.

Then Tuesday, as you know, I went to talk to a therapist who I've used on-and-off for years. She is wonderful and always has some new perspective on things. The session was not without its sadness as we talked about letting go here, but it was more about what I can do to make this whole thing REALLY WORK for me and all of us. I left there feeling very, very good about this whole thing.

As I drove home, I began to think about buying a place in the country (I saw some, but they were tiny and not in great shape, but some were in lovely locations) and fixing it up, adding on, whatever, to make it exactly what we wanted (ok, I admit, I'm a renovation junkie. Just ask Walt). I thought about how the timetable would really work for that - finding the property and the major rebuilding could take place during the transition period while I was finishing up the heavy part of my business here, and we'd have a great place to move to.

By the time I got home, I was very excited about the possibilities. When Walt told me the decision that had been made for us, I felt as if I'd been hit with a board.

Yes, it's taken a long time for me to get behind this move. Yes, it will be hard to pull up roots and leave my community, my home, and my friends. And yes, I would prefer that MS move its entire campus to Massachusetts -- any chance? :-). But I'm old.

enough (never mind how old) and wise enough (I'll be glad to tell you how wise I am) to know that we don't always get our way.

I am very excited about this opportunity for Walt, and once I came to the decision that he should take the offer, if it were forthcoming, I have never wavered from it, even through the emotional ups and downs. As the days have gone by and I've "settled in" to the idea, I've seen it as a challenge, not an insurmountable task.

Walt and I have been separated (due a job transition) in the past, and we've made it through. Our marriage and our family are healthy and happy, and Walt has been wonderfully supportive of me through this whole thing. As excited as he's been about this opportunity, he has never, "never" forced me to make a decision to make this move. That decision - on my part at least - came from somewhere deep down inside of me and I am at peace with it.

Please reconsider your decision to rescind Walt's offer. Although I do prefer the longer transition period for the reasons we discussed on Friday, and it will make the transition much smoother for me, it is definitely not a "make or break" for this offer. I would like to see Walt start his work at MS sometime in May.

Thanks for reading this long letter (brevity has never been one of my virtues)!

Linda

When I received my copy of Linda's note, I forwarded it on to Joe. I also sent both notes to Nat, and left him a phone call that I wanted to talk to him. He returned my phone call, and he too expressed his puzzlement at the turn of events, and his belief that the situation could be turned around. He told me that the worst thing I could do was to suffer in silence, i.e., I was doing the right thing by proactively trying to inform the process with email messages, and he noted that the two that had already been sent seemed very effective. I asked Nat if I could use him as a reference, but he demurred, citing MS hiring politics (it's not kosher for an employee to get involved in any other organization's recruiting). I said I understood, and thanked him for his support anyway.

On Thu, Apr 17, I sent the following note:

| From walt@postman.osf.org Thu Apr 17 08:36:17 1997
| Return-Path: walt
| From: Walt Tuvell <walt@opengroup.org>
| Date: Thu, 17 Apr 97 08:36:00 -0400
| To: megmac@microsoft.com, margretj@microsoft.com, dayeth@microsoft.com
| Cc: llkforms@aol.com, joemal@microsoft.com, walt@opengroup.org
| Subject: References
| X-UIDL: 8c8ea64155daa5d9f25a61fb8a6a1b3f

Meg, Margaret, Dave -

I've been thinking some more this morning about how to break the impasse concerning my family's alleged unpreparedness for me to make a career move at this point, and I came upon the idea of *references* (a.k.a., "trusted third parties"), both personal and professional. This seems like it should be a way for you to gather some information that may be more reliable than Linda's brief clouding-up you observed on Fri. I'm assuming that's the only remaining real problem, though that still hasn't been confirmed to me.

(I trust the lengthened transition period can now be discounted as an issue, since Linda and I have both made it quite clear that it is not a blocking factor, only a useful convenience. Even though Meg mentioned in passing during our talk on Tue that long transitions had sometimes not worked in the past for some couples, she certainly voiced no such concerns in our particular case during our meeting with her last Fri -- indeed, she cheerfully volunteered an extra-long 18 months -- so it would be very puzzling indeed if this remained an issue at this point.)

Regarding personal references:

You have an employee right there at MS who can vouch for me. His name is Joe Maloney (joemal@microsoft.com, 206-703-9959). I used to work closely with Joe at OSF, and he's been with MS for about 2 months now, working as a Group Marketing Manager under Cornelius Willis. What's most relevant is that Joe's family knows mine socially. I had dinner with Joe the night of my MS interview on Mar 21 (Dave will remember that, since he dropped me off at Joe's office), and my whole family had dinner with Joe just last Thu during our trip out your way.

I have obtained Joe's consent to use him as a reference. Conversely, I authorize and encourage Joe to "tell it like it is" when you contact him. One hitch to this arrangement is that you folks don't know Joe personally, so you have no a priori reason to trust him. You could solve that by using an "introducer": someone both you and Joe know and trust. I know of some names I could mention, but since I don't know the politics of MS hiring policies I'd better just let you folks work that one out among yourselves.

Finding a suitable non-MS reference (one that knows my family, not just me) for you to contact is more problematic. Certainly no OSF (TOG) reference is suitable, because I don't want to jeopardize my current employment situation, and also because such a reference could well give you false information (to keep a good employee at OSF). All pre-OSF references are stale at this point (nearly 8 years, though I could dig one up if you think it would help). And in any case, no non-OSF/non-MS reference is really suitable anyway, because MS competes with their companies, and therefore they could be motivated to give unflattering reports about me to prevent my going to MS and

competing with them. This even applies to a certain former boss of mine who now works at the seemingly far-flung Citibank (too bad MS is so threatening to so many industries). I have certain knowledge of such disinformation being disseminated in a similar case (the hiring company even contacted the candidate's current company against the candidate's wishes, a clear violation of business ethics), and it's probably a situation you're also familiar with, judging from the rigor of your own interview cycle as I observed it (tough, but fair).

Regarding professional references:

As Linda mentioned in her note, there is a psychotherapist (LICSW) here who is familiar with, and supremely qualified, to comment on our situation. Her name is Stephanie Ross (617-646-6640). Similarly to Joe, I will today obtain her consent to use her as a reference, and to waive our confidentiality privileges with her for your convenience.

Alternatively (or additionally), instead of playing amateur psychologist yourselves (I don't suppose any of you have professional qualifications in that field, do you?), you may prefer that a psychologist of your own choosing interview us, and we'd welcome that. As another variation, you could have your psychologist talk to Stephanie. Come to think of it, that's probably the best idea of the bunch, because it has the best chain-of-trust properties.

I think I've given enough proposals here to enable you to validate or invalidate the preliminary opinion you have reached thus far, and I hope you will avail yourselves of them so that we can move this process on to a mutually satisfactory conclusion. Don't hesitate to let me know if you have some additional or better ideas.

- Walt

PS. As I mentioned some time ago to Meg, Linda and the kids will be visiting her parents in Pittsburgh next week. That should not impact our continued working on this issue, as she can be brought in by phone at any time if necessary. Similarly, I know that Joe Maloney plans to be in Boston next Mon, to support his wife, Jan, in her running of the Marathon. (If I hadn't had a hernia operation in Feb, I'd be running it too.)

Later that morning I called Stephanie to ask her for her consent to act as a reference. She was out of her office all day, but when she got the message that evening she called me and gave her consent. More than that, she enthusiastically offered to help in any way whatsoever, saying she'd "talk to anybody, or write anything, to help out". I thanked her for her support, and said I'd let her know if there was anything else she could do to help. That night, I thought more about it, and realized that MS probably wouldn't contact Stephanie of its own initiative, so a more effective course of action would be for Stephanie to write a letter we could send to MS. Sometime during this day I also

called Joe and told him what Nat had said to me. Joe said that Nat had also told him the same thing face-to-face. Joe said his reaction to what Nat told him was, "Uh-huh". In other words, even if Nat wanted to play the company-man by the books, Joe intended to be a stand-up guy if somebody asked him about me.

As another example of the distress all this has wrought on Linda, she today had to look up the phone numbers of two of her friends (Judy, Martha) -- phone numbers she has known by heart for years, and which she calls virtually every day, often multiple times a day. For my part, my sleep patterns have been disrupted (hence the title Sleepless in Boston).

On Fri, Apr 18, I called Stephanie and left a message telling her about my idea of the night before, and asking her to write a report we could send to MS. I was in the process of composing a note to MS saying that I had gained Stephanie's consent to act as a reference, and that I was asking Stephanie to write a report on our family's preparedness for the move to Seattle, when I got a phone call from Meg. She told me that the offer was really not going to be reinstated (see below for more details about this phone call). What's more, she told me that the real reason for withdrawing the offer had nothing whatsoever to do with my family's preparedness to move after all (!!!), it had instead to do with the "fact" (I learned that term must be used advisedly when uttered in a context involving MS) that I had not exhibited a command of "business judgement" consistent with the level and position I was being recruited for. I was utterly thunderstruck, outraged and furious. My predicament had instantly escalated from that of a disappointed job candidate to that of the target of a wanton persecution by corporate arrogance at its ugly worst. Namely, 3 people had just put me and my family through a terrible hell for 3 days, and to all appearances they had shown no remorse about it whatsoever. They had all been copied on the email messages we had sent, so they knew we were trying to work our way through their lie, but they didn't put a halt to our suffering until it became clear to them that we could document our preparedness to move to Seattle with expert testimony (Stephanie), thus proving to any impartial observer that their lie was indeed a fabrication. Their refusal to put us out of our misery constituted a conspiracy which they steadfastly maintained until it was no longer tenable, and that's why I wrote "explicitly designed to maximally injure" in the letter below. So I called Stephanie and left another message to cancel the request for a report and to "forget about MS", and that I'd explain everything later. I then deleted the note I had been working on and composed the following one:

| From walt@postman.osf.org Fri Apr 18 14:13:47 1997
 | Return-Path: walt
 | From: Walt Tuvell <walt@opengroup.org>
 | Date: Fri, 18 Apr 97 14:13:38 -0400
 | To: megmac@microsoft.com, margretj@microsoft.com, dayeth@microsoft.com
 | Cc: ilkforms@aol.com, walt@opengroup.org
 | Subject: Farewell to all that
 | X-UIDL: b3447b1f85d2c816f4764dcd3c320c49

Meg, Margaret, Dave -

I just got off the phone with Meg, presumably for the last time (just as this is presumably the last note I will be sending you folks on this topic). Here are my notes on it. Disclaimer: throughout, I use "you" to refer to whatever subset of the three of you who have been involved in the events in question (my direct contact has been Meg, but I don't know what's gone on behind the scenes, so I don't know who's been responsible for what).

Meg called to repeat, more emphatically, her statement of Tuesday, that the offer ("for this position at this time") was withdrawn, and I accepted that. I then asked her if the real reason for the withdrawal was indeed her earlier stated one (that "it might not be the best thing for (y)our family at the present time"), and she said NO (!!!). She said that the real reason was that some incident(s?) about my "business judgement" had been observed that indicated I was an unsuitable match for the position.

This was a very remarkable statement. You explicitly admitted that, one way or the other (i.e., it's now impossible to tell where the truth lies), you LIED (I don't know how else to put it) about the reason for the rejection. Not only that, but you did so in a way that was explicitly designed to maximally INJURE a person (my wife) who was an innocent bystander, and indeed to sow dissention within my family (by causing me to "blame" Linda for the rejection)!! (Proof: Meg said several times today that what happened in my family was a personal issue, and that MS was not interested in my family at all -- so basing the rejection on my family's behavior was a smokescreen all along.) To any reasonable observer, this is dirty, despicable, dishonorable, unethical-- and perhaps even illegal -- behavior on your part (again, I don't know how else to put it). Or, as I said to Meg, you've "gamed" me -- and more especially my family -- and I'm MAD AS HELL about that.

Even while recognizing this double-dealing on your part, I continued to try to understand it. After all, none of us is perfect, and I wanted to know how I might work to rehabilitate myself. Thus, I asked Meg repeatedly if she could tell me what the alleged "business judgement" incidents were, but she steadfastly refused to tell me. Some examples: I asked Meg if the 18-month transition period had anything to do with it. She said No. I asked if Linda's crying had anything to do with it. She said No. I asked if my family's alleged unpreparedness to make the move had anything to do with it. She said No. She repeatedly said it had to do with "business judgement", but she refused to be more detailed than that. So I asked if it had to do with my eating some of the edible flowers in the salad at Dave's house (perhaps a social faux pas). She said No. I asked if it had to do with the amount of wine I drank (noting that I had observed how much others were drinking, and scaled my consumption (upwards) to match theirs). She said No. I asked

If there were some concerns that I had lied on my application or resume. She said No. I asked if there were some concerns about my expense report for my interview trip (noting that it was normal corporate practice to simply flag questionable expenses and not pay them, with which I was comfortable). She said No (actually, she said there were indeed some expenses that MS questioned, but that was a separate, minor issue, unrelated to the "business judgement" issue). I also asked if maybe someone (Dave or Margaret, presumably) had made a snap decision to withdraw the offer, and had become so emotionally invested in that decision as to be unable to revisit it. She said No. I may have tried another few things, but I forget them now, and in any case it was clear that Meg was prepared to stonewall the whole issue forever.

In short, unless you can prove to me that I have massively misinterpreted these events (and you've proven singularly unhelpful in anything else I've tried this week), then I'm glad you've rejected my application, because had I known about your lack of professionalism and human decency earlier, I would assuredly not have applied for the position.

Oh, did I burn a bridge there? Good.

- Walt

PS. The four notes that we have sent in the last four days (three by me, one by Linda) have faithfully represented our sincere attempt at communication focused on grappling with this amazing situation. We have not knowingly engaged in any sort of distortion of our recollection or interpretation of the events, and we have tried to the best of our abilities to rectify any wrongs we may have committed. If these notes *themselves* are the cited lapse of "business judgement" that Meg cited (which is doubtful, because today she spoke in the past tense, as if it had something to do with the weekend), then your definition of business judgement doesn't match mine. After all, the notes have all been courteous and problem-solving-oriented, and you gave me your business cards with email addresses, explicitly so I could contact you about issues that may arise during the recruiting process. Except for the tone of the present note, of course, which is admittedly a "flame", and beyond the bounds of good "business judgement" – intentionally so, because you deserve my wrath, as well as that of any right-thinking person, in a matter that has to do solely with personal issues and has nothing whatsoever to do with MS and OSF as companies. In the vernacular, you fucked with my family, and there's no forgiveness for that. Goodbye and good riddance to you.

While I was in the midst of composing the above message, Linda called me. When I told her about Meg's call and that I was working on another letter, she implored me to not send the letter, and instead to let it sit for a day and her look at it for editing/sanitizing before sending it. I did not heed her advice. When I sent the letter I blind copied Nat and Joe. Afterwards I also sent copies of all four letters to Paul and

Peter, figuring they were savvy enough to get some of the MS recruiting process cleaned up:

| From walt@postman.osf.org Fri Apr 18 14:31:58 1997
| Return-Path: walt
| From: Walt Tuvell <walt@opengroup.org>
| Date: Fri, 18 Apr 97 14:31:55 -0400
| To: paulle@microsoft.com, petebr@microsoft.com
| Subject: I won't be seeing you
| X-UIDL: be034c383afeb0995d88f1bb70121baa

| Paul, Peter -

| Since I was really looking forward to working with you guys (also others there, but especially you two), I feel I owe you a personal explanation about why that won't be happening.

| As you know, I interviewed on Mar 21, and got verbal notification of the terms of an offer, and was invited to come back out last weekend with my family to wrap up the deal. We did that, but something happened (I'm still not sure what) to kill the deal, and it happened in such a poisonous way that it has to be seen to be believed. The whole sorry story is laid out below. (I certainly don't expect you to take any action on it, of course.)

| Again, thanks for supporting me, and I'm really sorry this didn't work out. I have no reason to question the integrity of you two, but judging from what happened to me I wonder how many other good people the MS hiring process might be alienating (indeed, trying to destroy)?

| - Walt

|/* Copies of the four letters not included here. */

On the spur of the moment, I also sent copies of the four letters to Bill Gates:

| From walt@postman.osf.org Fri Apr 18 14:45:36 1997
| Return-Path: walt
| From: Walt Tuvell <walt@opengroup.org>
| Date: Fri, 18 Apr 97 14:45:31 -0400
| To: billg@microsoft.com
| Subject: Your recruiting process
| X-UIDL: 11553837408eaeda7abf3a63dd08d13f

| Bill -

| You don't know me, but I recently (Mar 21) interviewed with MS and received a verbal offer, but after the second trip (last weekend) the offer was withdrawn. No problem with that, except that it was done in a way that was literally intended to destroy my family (see transcript below). I strongly object to that. Any idea what should be done about it?

| - Walt

/* Copies of the four letters not included here. */

At the time I sent this letter to Bill, what I had in mind for "what should be done about it" was that he should clean up his recruiting organization and get to the bottom of this debacle. Subsequently, as I have ruminated on the totality of what has happened, I think that I and my family have been so seriously wronged that merely cleaning up the MS recruiting organization does not begin to redress the damage done.

When Linda read the letter later in the day she told me she did not approve of it. I told her I had a clear conscience. Also on Fri, Stephanie called and left a voice mail message responding to the message I had left her earlier in the day, saying that she felt terrible, and saying that she'd like to help support us in "whatever form that might take", and "it just seems like kind of an absurdity to me", and "they really don't know what they're missing".

On Sat, Apr 19, Linda sent the following eloquent note:

| From LKforms@aol.com Sat Apr 19 12:36:28 1997
| Return-Path: LKforms@aol.com
| From: LKforms@aol.com
| Date: Sat, 19 Apr 1997 12:36:25 -0400 (EDT)
| To: megmac@microsoft.com, margretj@microsoft.com, daveth@microsoft.com
| cc: walt@opengroup.org
| Subject: A final word from Linda
| X-UIDL: 80fcbe937cc5ad5df7b42f177fcf096a

Dear Meg, Dave and Margaret-

Well, as long as Walt has so thoroughly "burned his bridges", I guess it won't hurt to get my final two cents in here as well. After all, I've been dragged from coast to coast twice over this and have been intimately involved in this whole thing.

When the call from Meg came on Tuesday morning, that MS was rescinding its offer because "this was not a good move for your family at the present time", I was at first consumed with guilt. Apparently, because of my desire for a long transition period, coupled with my little "outburst" at the party, I had blown for Walt what had appeared to be just a stellar opportunity.

Walt appeared absolutely *furious* with me at first. I will never forget the hurt and angry look in his eyes when he told me about Meg's call. It could have caused an incredible rift in our marriage. Instead, he briefly told me Meg's reason for rescinding the offer, then left the house for an hour-long run. During the run, he realized that the solidarity of our family was paramount. When he came back, he asked me if I was really, *really* behind him on this offer, and when I replied that I was, we each wrote our letters addressing what we had been told was the issue.

I was very impressed at how Walt handled the situation with me,

given the magnitude of his disappointment, the cause of which appeared to be my fault. And I was pleased that I was able to move past my own self-recrimination and on to more productive things, i.e. addressing what appeared to be the issue.

So, when the "reason" for the withdrawal of the offer was changed on Friday (Walt's "business judgment"), I was even more surprised. Why was MS changing its story? Only one week before, MS had made it clear that they really, REALLY wanted Walt with a wonderful offer. Had Walt said or done something at the party or at the interview with Meg on Friday? I was present for both, and there appeared to be nothing damaging. On the contrary, we felt relaxed and good about both affairs and it seemed that if anything, the interview and party cemented the deal.

And more puzzling, what had *really* happened between Friday night, when Dave warmly shook Walt's hand as we left the party and told Walt how much he was looking forward to his coming on board, and Tuesday morning when the fateful call came?

It is pretty obvious that what we were told was not the really reason for the revoking of the offer, especially since the reason was changed after we effectively addressed it (complete with professional testimony, if needed).

I can only think of a few possible scenarios: Someone who doesn't like Walt (and, as you can probably guess from his "little flame", they do exist) got to someone at MS on Monday and gave Walt a bad rap, or there are some internal MS politics going on to which we aren't privy. Or perhaps MS had done something "wrong" during the process and had to backpedal as a result.

I know that eleventh-hour offer revokings are probably not the norm for you guys (or at least, I hope not), but the way it was handled was very damaging to all concerned. You could have just been straight without giving anything away ("There are some internal things going on here that we cannot discuss, but we have to rescind the offer" or "In going over the whole process, we have decided that this position is not a good match after all") instead of blaming first me for my reluctance to come, then blaming Walt for his business judgment, with no further explanation to him about that statement. Had it been handled better the end would have been the same, but with better, cleaner feelings all around.

Walt's fury over this is not that the offer was rescinded, but the way it was rescinded, especially with the initial reason given. I will not ascribe the list of adjectives to your behavior that he did, but it was certainly thoughtless and without regard to the repercussions that it could have generated within our family. It could have torn a less-healthy marriage apart, or at least done considerable damage.

Although I do not agree with him in sending you his final flame,

I do understand why he did it. He needed to give himself closure over this whole thing, and since he couldn't get it from you, he took it on himself to get closure by absolutely, positively burning all bridges.

It is sad. I really enjoyed meeting all of you. Meg was delightful and funny and Dave and Margaret, you have wonderful families. Eric still talks about Brian and how much he enjoyed him. I felt instantly comfortable with and welcomed by everyone I met.

Handled well, this would have been *merely* deeply disappointing and sad. But instead, the only adjective we can attach to this whole thing is "bizarre". We are puzzled and angry as well as disappointed and sad.

Thank you for taking the time to read this.

Linda Kling

Then, later in the day on Sat, I began writing these notes.

Throughout the whole MS recruiting process Linda and I had kept our closest friends (and Stephanie, of course) informed, naturally, but during the last week (following the withdrawal on Tue) we started leaning on them for moral support as well. They helped us immeasurably. The toll this has taken on us becomes clearer if you look at some of the questions that remain unanswered in our minds (the very nature of some of these questions shows the whole thing has driven us to exhibit some symptoms of paranoia -- but is it paranoia after all, given that it's provably been a conspiracy?):

- The paramount question is, of course, what was really behind all this? Had MS planned the whole thing to play out the way it did? Or did something happen between Fri night (when Dave and I shook hands) and Monday night (when Meg sent her "Let's talk" note)? If it's the former, then MS is actively trying to destroy my career and we're dealing with sociopaths, which is too hard for me to think about (though not impossible, in the light of actual events), so I'm assuming it's the latter.
- Was the Hyatt bugged (perhaps in the fruit basket MS sent us)? Linda and I had talked about leaving Seattle after some number of years and returning to Boston as one scenario of how the future might play out, so maybe MS picked that conversation up and decided to withdraw the offer.
- Did some outside source contact MS with very damaging information about me? Maybe somebody from a competitor, or somebody from OSF, or a private investigator? If so, I really need to know about that, for a variety of reasons (for some of them, see my note of Apr 17). In particular,

if some false information has been disseminated about me, I need to get it removed from my "permanent record".

- Was it somebody internal to MS? Maybe some internal political situation blew up (like Dave was trying to get a corner on the security work within MS but some other folks didn't like that, and I became a pawn in their game). Or maybe my resume was slowly making the rounds until it landed on somebody's desk who decided to kill the application. For example, maybe somebody decided I was too old (is ageism in hiring illegal?). I'm told Bill Gates himself still gets involved in the hiring process for high-level positions, and Meg certainly emphasized that I was coming in at a high level. But if any of this was the case, why didn't Meg just say, "We've decided we don't want you, go away"? Why did she instead lie to use about the family's ability to make the move to Seattle, and then lie (presumably) about my business judgement?

- What exactly is the "business judgement" problem? Does it exist at all, or is it another lie? I suspect the latter, since Linda was with me during all my contacts with MS during our second trip to Seattle, and she observed nothing unusual. If that's the case, then MS is engaging in a continuation of their conspiracy (to injure Linda and our marital relationship with their first lie; to injure me with their second lie). This is criminal behavior, in my opinion.

- And, no matter how you slice it, this whole business stinks to high heaven of COVER-UP.

↳ - On the basis of how the recruiting process was going, and the verbal offer extended to me, I have been progressively disengaging myself from job at OSF (declining new work, for example, in the expectation that I wouldn't be around to finish it, so somebody more invested in it should do it instead), and have even inquired about getting a severance package from OSF. I sent a note to that effect to my boss and his boss on Tue, Apr 15, prior to talking to Meg and finding out the offer was being withdrawn:

| From walt@postman.osf.org Tue Apr 15 10:50:24 1997
| Return-Path: walt
| From: Walt Tuvell <walt@opengroup.org>
| Date: Tue, 15 Apr 97 10:50:20 -0400
| To: harvey@opengroup.org
| Cc: davel@opengroup.org, walt@opengroup.org
| Subject: Talking
| X-UIDL: 84383c52321f6f880a3ae7f15d7d736b

| Art, I got your note that we should talk. Unfortunately, my car wouldn't start this morning, so a face-to-face will have to wait until tomorrow. However, I do agree we need to talk, and to that end I want to put some issues on the table that we should talk about.

I am dissatisfied with the way I am being treated at OG. Over a number of months now, I have been increasingly marginalized, and I don't like it. Here are a few particulars that bear this out:

- A number of times, over a long period of time now, I have stated to you that I did not like being pigeon-holed as a security czar -- that I wanted to be more involved in actual projects, especially DCE (notwithstanding the good job Rich Salz is doing on that). Nothing has happened to address this request.
- Similarly, when the ACD work came along, I told you I wanted to be involved in it. That's why I went to the Long Beach PDC with you, and why I made my first visit to Microsoft, with Joe and Dick. However, you assigned Ellis to do that work instead of me, and you didn't even tell me you were doing so.
- In the process of working with my security partner in X/Open, Dean Adams, I have been consistently advised to be open and above-board with him, to further the effectiveness of the merger. To that end I have pro-actively kept him in the loop in such areas as our PKI work with DISA, KRA, and my second trip to Microsoft (when I solicited Dean's input). But at the recent Member Meeting, Dean was involved in a side meeting at Microsoft (on smartcards), with IBM, DEC, HP and JP Morgan -- and I wasn't informed either of the existence of the meeting beforehand, or about its outcome afterwards, until it was discussed in public session the following day. I complained to Dave about this after the Member Meeting, but to date he has not related to me any action he has taken with Allen Brown or Dean about this event. I conclude he has done nothing, thereby demonstrating his lack of support for my role in the TOG security program.
- Dave has also recently taken a note of Barbara Cary's to be an important announcement. In fact, I had told him about it, and more, 6 months ago, when I started the KRA work (and, of course, my insistence on including key recovery in the PKI/DISA work). Further, if he did indeed believe Barbara's note to be interesting, why didn't he consult me about it before he embarrassed himself by sending out a public statement? As a result, Rich Salz had to correct him, publically showing that Dave was completely in the dark about both the content of the issue and about its timeliness, yet he still asked Rich to put out some sort of statement with Barbara. Since our licensees are assuredly already fully knowledgeable about all this, this will constitute an even more public embarrassment.
- The latest re-org, a.k.a. the Renaissance process, has

now determined that TOG should shift from being a technology company to being a pizza parlor. I.e., a place for others to get together and talk about things, I.e., OSF disappears (with the RI taking over the role of the current Arch Group), and we become X/Open all over again. Since I am a technician and not a waiter, that leaves precious little for me to do in TOG.

- The IT Dialtone work was the one piece of work that you suggested I participate in. Initially I couldn't work too much on it, because of other commitments. More recently, the notion of an IT Dialtone architecture from a soon-to-be-non-technical-company has become an industry joke, which is why I have declined to put any work into it (it would be detrimental to my long-term career to have it on my resume, because as I said I am a technician not a waiter).

- A couple of months ago I told DeFeo face-to-face about the devastating effect his administration was having on the staff, and he promised me he would publically address my concerns (particularly some very erosive rumors that had been submitted to HR, by request) at an all-hands meeting. The recent announcement that the next all-hands meeting would accept only live-audience questions now "appears" makes DeFeo out a liar. Though we will have to await the actual event to see what happens, if he doesn't address the concerns I raised, then this betrayal of a direct promise to me is pretty definitive evidence of my marginalization.

This marginalization is the reason I have asked you and Dave about a severance package. Since I am being forced little by little to leave TOG, I believe I should be compensated for it. We should be able to work out a package that is advantageous to both sides.

- Wait

This has certainly jeopardized my performance review at OSF for this year, and has the potential to jeopardize my whole career at OSF.

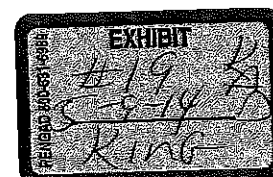
- Two phrases keep recurring among us and our friends. Linda keeps saying, "What hit us?" And EVERYBODY keeps saying, "Bizarre." Quite so.

It is these unanswered questions, and more that sure to crop up but we haven't yet thought of, that continue to gnaw at me, and which I feel compelled to get to the bottom of one way or another.

On Sun, Apr 20, I finished writing these notes. This exercise has been a necessary part of my healing process. (For example, I didn't cry once throughout this ordeal until today, after

writing this story down – then I put Ma Vlast on the stereo and cranked it up full blast, and cried like a baby.) But though the healing process has now begun, it will be a very long time before I can really feel whole again. Rape does that to you.

-- END --



Subject: Re: Where I got PTSD
From: Patricia Barnes <barnespatg@gmail.com>
Date: 06/03/13 17:04
To: Walt Tuvell <walt.tuvell@gmail.com>

Hi Walt - If you want to write a short piece on the "settlement" mentality and your goals re, IBM, I'd consider using it on my blog. It may not be best for your litigation though - so you should consult with your attorney. But I think it would be an interesting addition to the "literature." If the time's not right now, consider waiting until it is. Pat

On Sun, Jun 2, 2013 at 4:14 AM, Walt Tuvell <walt.tuvell@gmail.com> wrote:

Exactly so. Linda has felt terribly guilty ever since, no matter how much we console each other it was all MS's fault, not ours. So she has her own PTSD over it, and is a big reason why she's 100% in my corner about going to the mat with IBM (except for the first 6 months, when I was "self-medicating" too much ...).

But in the end the MS incident (and others!) have spurred me to the place I am now, where I'm an employment lawyer in all-but-degree. Nietzsche: "What does not destroy me strengthens me." That's why I've got IBM nalled: they made the exactly wrong steps all along the way, which I recognized, and I made the exactly right steps all along the way. I do hope you figure out how to open the zip file, just a cursory glance will show you why this case is like no other.

FWIW, I am working. I got a new job at a small place immediately after IBM, and neither company knows about the other (yet). So that's yet another reason I can afford the route I'm taking. And I needn't worry about burning career bridges, as I'm now at retirement age (65, plan to work until 70). I do understand that I'm in a unique position to be able to eschew settlement, and I don't mean to "dis" other employees who've taken that route (I even did so once!). But I DO mean to "dis" the corporate mindset that just sees settlement as a built-in cost of doing business.

Incidentally, the federal bias against employment plaintiffs really doesn't apply in my case, for 2 reasons: (i) all the cards are stacked in my favor, with respect to DIRECT (email) evidence of discrimination (which no judge/jury can ignore, given competent counsel); (ii) my case is mostly a (discrimination)-RETALIATION case (direct proof of "retaliation per se"), for which see the attached paper.

Thanks again, Pat! I hope I can continue to find kindred souls like you through this journey, and that I can make a contribution to the cause commensurate with theirs/yours.

- Walt

On 06/02/13 02:51, Patricia Barnes wrote:

Hi Walt:

II imagine your whole family was traumatized by the Microsoft incident - what kind of a culture does that kind of behavior speak of? A very dysfunctional culture.

I know that it can take years to really get over workplace bullying but people do ... and I know many people who have gone on to have great new successes. There's even a line of thought that if you've never been fired, you're not challenging yourself enough.

I hadn't given thought to the perspective of the "settlement" culture. There is something to that ... but I also think that people settle because its emotionally draining to be in an adversarial situation with a former employer; out of fear (federal judges dismiss employment law cases at a disproportionately high rate), and; because very few middle class people have the resources (or relatives!) to pursue a lawsuit.

I hope you enjoy pursuing litigation. I think it can be great fun. However, I'm sure that IBM will throw a lot of crap your way.

Anyway, I'm glad to hear that you have retained a good lawyer because it makes a huge difference to have support in the trenches.

Pat

On Sat, Jun 1, 2013 at 5:53 PM, Walt Tuvell <walt.tuvell@gmail.com> wrote:
FYI, sent this to my lawyer, thought you'd get a kick out of it.

----- Original Message -----

Subject: Where I got PTSD

Date: Sat, 01 Jun 2013 20:41:20 -0400

From: Walt Tuvell <walt.tuvell@gmail.com>

To: Robert Mantell <rmantell@theemploymentlawyers.com>

The excerpt below is from Patricia G. Barnes (a Judge in Nevada), "Surviving Bullies, Queen Bees and Psychopaths in the Workplace" (screenshot from Amazon.com, "Look Inside" feature).

Did I ever tell you how I first got PTSD? It came from workplace bullying. Microsoft officially offered me a job (twice, both hiring mgr and her boss), and invited me and my family to an acceptance party (in Redmond, Washington). There, they separated me from Linda, and quizzed her down so hard they made her cry. Then they told me they weren't going to hire me, because Linda "wasn't Microsoft wife material".

Oh, did I tell you I'd already tendered my resignation to the place I was working

at? So they retaliated upon me too, but I was able to gut it out and grovel around long enough to find another job a year later.

Bullying is endemic. Everywhere. And the only reason it thrives is because of the settlement culture. If others hadn't settled, these things wouldn't have happened to me. I won't be a party to enabling bullying to happen to others.

If an inconsiderate boss is a health hazard, imagine working for a bully boss! English psychologist Dr. Noreen Tehrani says bullied workers go through the same emotions and stress as battle-scarred soldiers returning from combat overseas. In her 2004 study of 165 nurses and social workers, she said 36 percent of the men and 42 percent of the women reported having been bullied. She said that one in five of the **bullied workers exhibited the main symptoms of Post Traumatic Stress Disorder (PTSD)**, including hyper arousal, a feeling of constant anxiety and over-vigilance and avoidance of factors related to the traumatizing event. PTSD also is characterized by repeated and painful reliving of the event in the form of dreams, flashbacks and intense distress whenever exposed to reminders.

From: Diane Adams
To: Lisa Due
CC:
BCC:
Sent Date: 2011-06-16 19:44:55:000
Received Date: 2011-06-16 19:45:02:000
Subject: Re: Fw: Transition and status reporting
Attachments:

OK - will do. Thanks!

Diane M. Adams
Netezza Steady State HR Leader
508-382-8534
adamsd@us.ibm.com

Lisa Due--06/16/2011 03:29:49 PM--I think that a response to tell Walt that this issue will be taken into consideration as view the wh

From: Lisa Due/Somers/IBM

To: Diane Adams/Fishkill/IBM@IBMUS

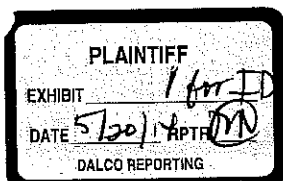
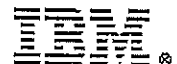
Date: 06/16/2011 03:29 PM

Subject: Re: Fw: Transition and status reporting

I think that a response to tell Walt that this issue will be taken into consideration as view the whole situation. I agree with you that it is too premature at this stage for a change.

Regards,

Lisa Due 19 Skyline Drive



Senior HR Partner/Case Manager Hawthorne, NY 10532-1596

IBM CHQ Human Resources United States of America

HR Integrated Services Team (IST)

Phone: +1-914-784-6177

e-mail: lisadue@us.ibm.com

Diane Adams---06/16/2011 10:50:47 AM--Lisa, fyi.....& unless you think otherwise, I am not planning to respond to Walt. I don't think

From: Diane Adams/Fishkill/IBM
To: Lisa Due/Somers/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS
Date: 06/16/2011 10:50 AM
Subject: Fw: Transition and status reporting

Lisa, fyi.....& unless you think otherwise, I am not planning to respond to Walt. I don't think we should be making any changes before this matter is looked into. Agree?

Diane M. Adams
Netezza Steady State HR Leader
508-382-8534
adamsd@us.ibm.com

----- Forwarded by Diane Adams/Fishkill/IBM on 06/16/2011 10:48 AM -----

From: Walter Tuvell/Marlborough/IBM

To: Diane Adams/Fishkill/IBM@IBMUS, Kelli-ann McCabe/Marlborough/IBM@IBMUS

Date: 06/16/2011 10:44 AM

Subject: Re: Transition and status reporting

Well, it looks like the pissing contest yesterday might have had an effect on Dan's attitude. (Diane: Kelli-ann can update you if she hasn't already.)

There's just one problem: I believe it is infeasible for me to work for Dan. I put my full faith in him, opening up from my previous PTSD, under his encouragement. He fully understood my total vulnerability, yet he screwed me royally the first chance he got, without hesitation or reservation. I have still not (nor do I expect I ever will) receive an apology or explanation from him (or Fritz), unless the IST process forces it. I have no doubt in my mind that I will be constantly bombarded by him with harassment and retaliation, ultimately being black-balled to the point where I'll be forced to leave due to hostile environment.

Sadly, I cannot not trust him, not even a little, and there's plenty of evidence to prove why.

Daniel Feldman--06/16/2011 10:25:10 AM--Walt, I am seeking your independent perspective on the transition.

From: Daniel Feldman/Marlborough/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Cc: Kelli-ann McCabe/Marlborough/IBM@IBMUS, Diane Adams/Fishkill/IBM@IBMUS
Date: 06/16/2011 10:25 AM
Subject: Transition and status reporting

Walt,

I am seeking your independent perspective on the transition:

Once the transition is complete and you are able to demonstrate your command of the tools and technologies that have been in use to date and to develop an independent view of their appropriateness and efficacy you should be able to recommend changes or improvements. It is very important that I have enough information to assess the state of the transition and that I be apprised of that state.

At this point it is important that you take full ownership of the work; these are your projects and the knowledge derived from them will have a profound impact on the success of our products in the marketplace. Part of that ownership for a contributor of your seniority includes responsibility for drafting and reporting against a schedule. The outline we developed on the whiteboard and that Sujatha subsequently documented can function as the beginning of such a schedule. Please provide me by end of day tomorrow a first draft for a detailed (one-day granularity) schedule for your work on the assigned projects between now and the beginning of your medical leave.

In addition, I would like to expand the scope of the work Sujatha had been doing and that you are now responsible for to include a significantly increased analytic component, work that Garth Dickie (like you, a PhD in Math) has been doing. I am hopeful that a collaboration between you and Garth will be professionally rewarding and fruitful for you.

-Dan.


Daniel J. (Dan) Feldman
Director, Netezza Performance Architecture
Software Group, Information Management

Phone: 508 382 8480
E-mail: dfeldman@us.ibm.com

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26 Forest St
Marlborough, MA 01752
United States



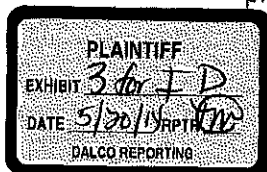
Re: 
Walter Tuvell to: Lisa Due
Bcc: walt.tuvell

06/23/2011 01:43 PM

From: Walter Tuvell/Marlborough/IBM
To: Lisa Due/Somers/IBM
Bcc: walt.tuvell@gmail.com
Default custom expiration date: 06/22/2012

Lisa, what you've written doesn't seem to map to what I was saying:

1. Sujatha wrote the 1-page doc I sent you, about the 4 projects that Sujatha had been doing, that now I'm supposed to be picking up, not things I'm handing off to her.
2. The stuff I handed off to her was in very good shape, because I'm very organized, and I explained it to her in about an hour (of course that didn't get her to understand the underpinnings, just enough to "push the button", but at least she was productive immediately). The opposite is the case for the stuff she's handing off to me.
3. Her write-up was basically one-line descriptions, as you saw, NONE OF WHICH I had any idea about previously. I have no idea why you say "I know all the steps". I obviously know NONE of the steps, because I know NOTHING of these projects of Sujatha's.
4. Nevertheless, Dan tried to coerce me into writing a day-by-day 3-week-schedule, based on Sujatha's 1-page doc, giving me one day to do it! ONE DAY! Yes, of course, the "time frame is of concern"!
5. Yet, when I asked him what he wanted me to do, by giving me an example, he couldn't do it, because he's never asked anyone to do such a thing before. And I've never seen such a thing before either, even though I do have very extensive experience. Without having any idea of what to do, and no example, it is indeed "impossible to succeed" -- because anything I do, Dan can say it wasn't what he wanted. That is harassment, pure and simple.
6. Anyone with an ounce of sense knows that such a schedule (day-by-day, 3 weeks, starting from scratch on new technologies) is impossible anyway. When one approaches an unknown technology (not to mention 4 of them!), you have no idea the direction it's going to take after the first step. So, if a 3-week schedule were written, it would necessarily have to be revised already after the very first step, in which case the abusive manager tells the employee they are in violation of the schedule. I know this trick: it's called blackballing.
7. Finally, this so-called "transition" is something Dan and Fritz cooked up in secret anyway, and shoved it down my throat, with no input from me whatsoever. It's not a "transition" just because Dan calls it that. It's punishment, period. Under the circumstances, how am I supposed to cope? I have made it quite clear to HR that I am nearly incapacitated now by recurrence of PTSD, just as Dan knew I would be (because we talked about it, many times). I cannot now eat (because of stomach problems caused by this anxiety), I cannot sleep (because of lack of food, and



TUVELL000278

mind-spinning perseveration), I cannot concentrate (because of lack of sleep, and intrusive thoughts), and I've started seeing my psychological health-care professionals again about this problem, including psycho-medication. I have begged HR to release from the grasp of the likes of Dan, yet I'm still forced to be here, more vulnerable than ever, and tortured beyond my ability to stand it. Isn't there supposed to be some sort of policy against discrimination on the basis of disability, by forcing me to continue working with/for my tormentor (and if having debilitating PTSD isn't considered a disability, I don't know what is)? Yes, "rape" isn't too strong a word, even though it's not of the sexual kind.

- Walt

Lisa Due Walt, this looks like a very sma 06/23/2011 01:10:55 PM

From: Lisa Due/Somers/IBM
To: Walter Tuvell/Marlborough/IBM@IBMUS
Date: 06/23/2011 01:10 PM
Subject: Re:

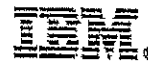
Walt, this looks like a very small project plan to me that you then will help map out the activities under each bullet. This does not seem out of the realm especially if you are the senior member (and obviously know all the steps) and Sujatha may need guidance (you mentioned she is not on your technical level). During a transition, this is not an "impossible- to- succeed" request because you have the technical expertise to map the project out specifically. (I have seen/done many of these myself.)

You may want to ask Daniel for an extension if the time frame is of concern.

Regards,

Lisa Due
Senior HR Partner/Case Manager
IBM CHQ Human Resources
HR Integrated Services Team (IST)
Phone: +1-914-784-6177
e-mail: lisadue@us.ibm.com

19 Skyline Drive
Hawthorne, NY 10532-1596
United States of America



Walter Tuvell Lisa, attached it the very thin o 06/20/2011 10:59:02 AM

From: Walter Tuvell/Marlborough/IBM
To: Lisa Due/Somers/IBM@IBMUS
Date: 06/20/2011 10:59 AM
Subject:

Lisa, attached it the very thin outline, all of which I had zero knowledge about previously, that Dan gave me 1 day to come up with a 3-week day-by-day workplan for!

Given that neither I nor anyone I know has seen anything remotely approaching this kind of onerous task heretofore, if this isn't harassment/bullying/blackballing, then I don't know what is. It is clearly intended to be an impossible-to-succeed

task.

I would very much welcome an unbiased third-party assessment of this.

- Walt

[attachment "SujathaMizar_ProjectStatus_061011.pdf" deleted by Lisa Due/Somers/IBM]

From: Lisa Due
To: Walter Tuvell
CC:
BCC: Daniel Feldman; John Metzger; Diane Adams; Kelli-ann McCabe; RUSSELL E MANDEL
Sent Date: 2011-06-29 16:03:17:000
Received Date:
Subject: *Confidential: Investigation
Attachments:

As you know, I was asked to conduct an investigation into concerns raised regarding your treatment by your manager, Mr. Daniel Feldman.

I have completed my investigation and found that there was insufficient factual information to support your allegations.

Therefore, you should proceed to do your current assignment to achieve the results outlined in your PBC goals. However, if you no longer wish to continue in this role, you may apply for other positions within IBM using the Global Opportunity Marketplace job system:
<http://w3-01.ibm.com/hr/global/OppMarketplace.html>

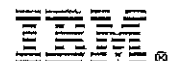
If you choose to look for another job within IBM, you are required to perform your current job while you pursue the search for a new role.

If you disagree with the findings of my investigation, you can engage Russell Mandel, HR Program Director of Concerns and Appeals, who will review whether the investigation was properly performed under IBM's investigation guidelines. Again, you will be required to perform your current assignment while this review is pending.

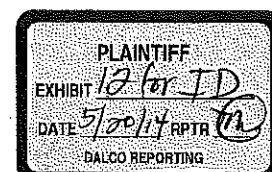
Finally, given the investigation has concluded, it is no longer necessary for me to be copied on your notes/correspondence.

Regards,

Lisa Due
19 Skyline Drive



Senior HR Partner/Case Manager
Hawthorne, NY 10532-1596



In The Matter Of:
Walter Tuvell vs.
International Business Machines, Inc.

Frederick C. Knabe
June 13, 2014



DORIS O. WONG
ASSOCIATES, INC.

COURT REPORTERS

50 Franklin St., Boston, MA 02110
Phone (617) 426-2432

Original File KNABE.txt
Min-U-Script® with Word Index

Volume I
Pages 1 to 158
Exhibits 1 - 12

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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-----x
WALTER TUVELL,           :
      Plaintiff,         :
      vs.                 :   Civil Action No.
                        :   13-cv-11292-DJC
INTERNATIONAL BUSINESS   :
MACHINES, INC.,         :
      Defendant.        :
-----x

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DEPOSITION OF FREDERICK C. KNABE, a witness called on behalf of the Plaintiff, taken pursuant to the Federal Rules of Civil Procedure, before Daniel P. Wolfe, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Rodgers, Powers & Schwartz LLP, 18 Tremont Street, Boston, Massachusetts, on Friday, June 13, 2014, commencing at 9:30 a.m.

PRESENT:

Rodgers, Powers & Schwartz LLP
(By Robert S. Mantell, Esq.)
18 Tremont Street
Boston, MA 02108
617.742.7010; Fax 617.742.7225
rmantell@theemploymentlawyers.com
for the Plaintiff.

Jackson Lewis P.C.
(by Joan Ackerstein, Esq.)
75 Park Plaza
Boston, MA 02116
617.367.0025; Fax 617.367.2155
ackerstj@jacksonlewis.com
for the Defendant.

ALSO PRESENT: Walter Tuvell

Frederick C. Knabe - June 13, 2014

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1 A. No.

2 Q. Do you recall whether the date of the
3 meeting was the same day that you met with Mr.
4 Feldman to discuss the graphics?

5 A. No, I don't recall that. In particular, it
6 is unlikely that they would have been in the same
7 day since my meetings with Mr. Feldman typically
8 were in Marlboro and my expectation is that my
9 meeting to discuss the graphics would have been with
10 the team in Cambridge. However, on occasion Mr.
11 Feldman did come to the Cambridge office. So I
12 don't know for sure whether it would have been that
13 same day.

14 Q. Do you have a present recollection of
15 complaining to Mr. Feldman about Mr. Tuvell's
16 failure to provide the graphics?

17 A. I do recall that I was frustrated that Mr.
18 Tuvell had not been able to produce the graphics for
19 this particular performance study.

20 Q. But my question is a little different,
21 which is do you have a recollection of making that
22 complaint to Mr. Feldman? Do you actually recall
23 doing that?

24 A. I recall a discussion with Mr. Feldman in

Frederick C. Knabe - June 13, 2014

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1 his office to discuss Mr. Tuvell's performance.

2 Q. I will ask you about that later.

3 A. Certainly.

4 Q. Your present recollection is it was a
5 meeting in person?

6 A. Yes.

7 Q. And it was in his office?

8 A. That's my recollection.

9 Q. And his office is in Marlboro?

10 A. Yes.

11 *Q. Given that you produced these graphics
12 yourself, at some point you must have gotten an
13 understanding that Mr. Tuvell was not going to
14 produce them; is that fair to say?

15 A. Mm-hmm.

16 Q. When did you learn that Mr. Tuvell was not
17 going to produce those graphics? You can't say
18 "mm-hmm." You have to say "yes" or "no."

19 A. Could you repeat the question or the
20 statement.

21 *(Question read)

22 A. Yes.

23 Q. When did you develop that understanding
24 that Mr. Tuvell was not going to prepare those

1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Daniel P. Wolfe, RPR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 13th day of
6 June, 2014, at 9:34 a.m., the person hereinbefore
7 named, who was by me duly sworn to testify to the
8 truth and nothing but the truth of his knowledge
9 touching and concerning the matters in controversy
10 in this cause; that he was thereupon examined upon
11 his oath, and his examination reduced to typewriting
12 under my direction; and that the deposition is a
13 true record of the testimony given by the witness.

14 I further certify that I am neither attorney or
15 counsel for, nor related to or employed by, any
16 attorney or counsel employed by the parties hereto
17 or financially interested in the action.

18 In witness whereof, I have hereunto set my hand
19 and affixed my notarial seal this 24th day of June,
20 2014.

21 

22 Notary Public

23 Commission expires 8/26/2016
24

In The Matter Of:
Walter Tuvell vs.
International Business Machines, Inc.

Victoria A. Vasquez, R.N., F.N.P.
April 14, 2014



DORIS O. WONG
ASSOCIATES, INC.

COURT REPORTERS

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Phone (617) 426-2432

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Volume I
Pages 1 to 145
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----x	
WALTER TUVELL,	:
Plaintiff,	:
	:
vs.	:
	:
INTERNATIONAL BUSINESS	:
MACHINES, INC.,	:
Defendant.	:
	:
-----x	

C.A. No.
13-CV-11292-DJC

DEPOSITION OF VICTORIA A. VASQUEZ, R.N.,
F.N.P., a witness called on behalf of the Defendant,
taken pursuant to the Federal Rules of Civil
Procedure, before Ken A. DiFraia, Registered
Professional Reporter and Notary Public in and for
the Commonwealth of Massachusetts, at the Offices of
Jackson Lewis P.C., 75 Park Plaza, Boston,
Massachusetts, on Monday, April 14, 2014, commencing
at 10:06 a.m.

PRESENT:

Rodgers, Powers & Schwartz LLP
(by Robert S. Mantell, Esq.)
18 Tremont Street, Boston, MA 02108,
RMantell@TheEmploymentLawyers.com
617.742,7010, for the Plaintiff.

Jackson Lewis P.C.
(by Joan Ackerstein, Esq.)
75 Park Plaza, Boston, MA 02116,
ackerstj@jacksonlewis.com
617.367.0025, for the Defendant.

ALSO PRESENT: Walter Tuvell

* * * * *

Victoria A. Vasquez, R.N., F.N.P. - April 14, 2014

128

1 Q. Did you rule out organic causes?

2 A. I did.

3 Q. Another assessment was short of breath,
4 decreased exercise tolerance while running without
5 chest pain?

6 A. Yes.

7 Q. In the Plan you put "Brief review of
8 possible medication choices." What is "RT01 week to
9 discuss medication"?

10 A. Return to office in one week to discuss
11 medication after the labs were in.

12 Q. And we did see before the note from August
13 of 2010.

14 A. Yes.

15 (Document marked as Vasquez
16 Exhibit 2 for identification)

17 Q. Exhibit 2 is an IBM Medical Treatment
18 Report Form. Is this your signature that appears at
19 the bottom of this page?

20 A. (Examines document) Yes.

21 Q. If you look at the portion that says "To be
22 Completed by Employee" at the top of the page, was
23 that completed by Mr. Tuvell?

24 A. Presumably.

Victoria A. Vasquez, R.N., F.N.P. - April 14, 2014

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1 Q. But everything below To be Completed by the
2 Healthcare Provider is your handwriting?

3 A. Yes.

4 Q. On the second page everything below Areas
5 of Functioning -- actually below Rating Impairment
6 is your handwriting?

7 A. Yes.

8 Q. So where it says, Rating "Impairment 4,
9 serious impairment," you did that?

10 A. Yes.

11 Q. And you did all the other circles below?

12 A. Yes.

13 Q. Where it says, "Overall impairment rating
14 0 to 5," you rated him a 4. That's your
15 handwriting?

16 A. Yes.

17 Q. And that's your signature below that?

18 A. Yes.

19 Q. Now, this is the form that you completed
20 with Mr. Tuvell and his wife in your office on
21 August 15th?

22 A. Yes.

23 Q. And the diagnosis you listed was sleep
24 disorder and stress reaction?

Victoria A. Vasquez, R.N., F.N.P. - April 14, 2014

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1 A. Yes.

2 Q. You indicated that Mr. Tuvell was taking
3 paroxetine, 30 milligrams?

4 A. Half a tablet.

5 Q. And that you were going to see him in four
6 weeks?

7 A. Yes.

8 Q. Where it says, "Work Ability: Is the
9 employee totally impaired for work," you wrote
10 "Yes"?

11 A. Yes.

12 Q. And that was your belief on August 15th?

13 A. Yes.

14 Q. Then you wrote that the total impairment
15 began on 8/15/11; is that correct?

16 A. Yes.

17 Q. And you wrote "Unable to get adequate rest
18 to be able to function at his job responsibilities";
19 that's what you wrote?

20 A. Yes.

21 Q. Then on the next page, Activities of daily
22 living, you rated Mr. Tuvell a severe impairment in
23 sleep and social and recreational activities, do you
24 see that?

Victoria A. Vasquez, R.N., F.N.P. - April 14, 2014

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1 A. Yes.

2 Q. And you believe that to be accurate?

3 A. Yes.

4 Q. Under Social Functioning, you rated him a
5 severe impairment for get along with others without
6 behavioral extremes; initiate social contacts,
7 negotiate and compromise; and interact and actively
8 participate in group activities, do you see that?

9 A. Yes.

10 Q. And that was your view at the time?

11 A. Yes.

12 Q. Under the next category of Thinking,
13 concentration, persistence, you rated him a 4, which
14 is serious impairment, on maintain attention,
15 concentration on a specific task and complete in a
16 timely manner; on Judgment. On both of those you
17 rated a 4; is that correct?

18 A. Yes.

19 Q. You also rated him a 4 on ability to
20 initiate decisions and perform planned activities?

21 A. Yes.

22 Q. On Adaption to Stress, you rated him a 5,
23 severe impairment, on manage conflicts with others,
24 negotiate, compromise?

Victoria A. Vasquez, R.N., F.N.P. - April 14, 2014

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1 A. Yes.

2 Q. And you rated him a 4, which is a serious
3 impairment, on set realistic goals, has good
4 autonomous judgment?

5 A. Yes.

6 (Document marked as Vasquez
7 Exhibit 3 for identification)

8 Q. Exhibit 3 is a photocopy of another Medical
9 Treatment Report Form for IBM which appears to be
10 signed by you on 9/7/11. Do you see your signature
11 at the bottom of the page?

12 A. (Examines document) Yes.

13 Q. And is that your signature?

14 A. Yes.

15 Q. To be Completed by Employer, that section
16 is not your handwriting? That's Mr. Tuvell's?

17 A. Yes.

18 Q. But everything below To be Completed by the
19 Healthcare Provider is your handwriting?

20 A. Yes.

21 Q. Then on the next page, everything below
22 Rating Impairment is your handwriting?

23 A. Yes.

24 Q. The diagnosis that you list is sleep

Victoria A. Vasquez, R.N., F.N.P. - April 14, 2014

133

1 disorder and stress reaction?

2 A. Yes.

3 Q. You indicate that Mr. Tuvell is still on
4 paroxetine, 30 milligrams?

5 A. Yes.

6 Q. You indicate as to his work ability that he
7 was totally impaired for work?

8 A. Yes.

9 Q. And that was your view at the time?

10 A. Yes.

11 Q. Then underneath you write "Sleep is still a
12 major impairment. Patient is in psychotherapy to
13 help his acute stress, this ongoing"; is that what
14 you wrote?

15 A. Yes.

16 Q. And that is your signature at the bottom?

17 A. Yes.

18 Q. Then on the next page, you rated Mr. Tuvell
19 a 4, serious impairment, in social and recreational
20 activities?

21 A. Yes.

22 Q. You also rated him a 5 in interact and
23 actively participate in group activities?

24 A. Yes.

Victoria A. Vasquez, R.N., F.N.P. - April 14, 2014

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1 Q. You rated him a 4 in get along with others
2 without behavioral extremes and initiate social
3 contacts, negotiate and compromise?

4 A. Yes.

5 Q. Then you rated him a 5, severe impairment,
6 in manage conflicts with others, negotiate,
7 compromise; and set realistic goals, has good
8 autonomous judgment?

9 A. Yes.

10 Q. And the overall impairment rating you gave
11 him was 3 to 4, between a moderate impairment and a
12 serious impairment?

13 A. Yes.

14 Q. That was your professional view at the
15 time?

16 A. Yes.

17 (Document marked as Vasquez
18 Exhibit 4 for identification)

19 Q. Exhibit 4 is another IBM Medical Treatment
20 Form dated 10/14/11. Everything on the front page
21 below To be Completed by the Healthcare Provider is
22 your handwriting?

23 A. Yes.

24 Q. On the second page, everything below Rating

1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Ken A. DiFraia, RPR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 14th day of
6 April, 2014, at 10:06 a.m., the person hereinbefore
7 named, who was by me duly sworn to testify to the
8 truth and nothing but the truth of her knowledge
9 touching and concerning the matters in controversy
10 in this cause; that she was thereupon examined upon
11 her oath, and her examination reduced to typewriting
12 under my direction; and that the deposition is a
13 true record of the testimony given by the witness.

14 I further certify that I am neither attorney or
15 counsel for, nor related to or employed by, any
16 attorney or counsel employed by the parties hereto
17 or financially interested in the action.

18 In witness whereof, I have hereunto set my hand
19 and affixed my notarial seal this 28th day of April,
20 2014.

21 *Ken A. DiFraia*

22 Notary Public

23 Commission expires 3/11/2016
24

Tier I
ID



IBM
MEDICAL TREATMENT REPORT (MTR) FORM
IBM CONFIDENTIAL WHEN COMPLETED

TO BE COMPLETED BY EMPLOYEE:

Employee Name: Walter Tuve Serial # 043821 Division: Natureza
Date of Birth: 6/19/47 Job Assignment: Performance Architect
Employee is responsible for any costs associated with the completion of this form, and for ensuring its return to IBM IHS (Integrated Health Services).
I authorize my health care provider (print name) VICTORIA VASQUEZ, NP to complete this form and to discuss this information with an IBM nurse and/or physician.
Employee Signature: W. Tuve Date: 8/15/11

TO BE COMPLETED BY THE HEALTH CARE PROVIDER:

I. DIAGNOSIS(ES) & ICD9 CODE(S) (if this case involves a mental health issue, complete page two also): Sleep Disorder 507.41; stress reaction 308.7

EDC if pregnancy: _____

II. DETAILED TREATMENT PLAN: (medications/dosages, tests, lab studies, referrals, treatment modalities, surgery dates, etc.):
Paroxetine 30mg 1/2 tab po QD

Date of Next App: 4 WKS

III. WORK ABILITY (Modified duty is available in many cases.)

Is the employee totally impaired for work? Yes No Estimated Return to Work Date: _____

(Fill out either "A" or "B" below as appropriate, but not both)

A. If totally impaired, give date total impairment began: 8/15/11 and explain in functional terms why the employee is unable to work: Unable to get adequate rest to be able to function at his job responsibilities

B. If NOT totally impaired, can the employee work with temporary modifications? Yes No

1.) If yes, give start date of modifications: _____ Estimated end date of modifications: _____

Specify workplace modification(s) requested: _____

2.) If no, explain in functional terms why the employee is unable to work with modifications: _____

IV. TREATING HEALTH CARE PROVIDER INFORMATION: (NOTE: This is a legal document. Please sign and date it.)

Name (please print): VICTORIA A. VASQUEZ, NP-BC Specialty: Family Practice
Signature: [Signature] Date: 8/15/11
Address: 416 Woburn St, Roslindale MA 01867
Phone Number: 781-944-0600 Fax Number: 781-942-0253

When completed and signed by health care provider, fax to 919-543-0934 (IBM Integrated Health Services Center), or for assistance call 1-888-553-5752 option #2.

INCOMPLETE FORMS, INCLUDING THOSE NOT SIGNED AND DATED, WILL NOT BE PROCESSED, AND WILL BE RETURNED TO THE HEALTH CARE PROVIDER BEFORE DETERMINATION OF BENEFITS CAN BE MADE.

IBM MEDICAL TREATMENT REPORT - PSYCHIATRIC IMPAIRMENT RATING PORTION

(Only fill out this section if this case involves a psychiatric issue)

Employee Name: Walter Tuxell Serial Number: _____

I. LEVELS OF IMPAIRMENT: Please use the following rating numbers to specify the degree of impairment for each area of function noted in section II.

- Rating Impairment:
- 0 No Impairment
 - 1 Minimal Impairment
 - 2 Mild Impairment
 - 3 Moderate Impairment
 - 4 Serious Impairment
 - 5 Severe Impairment

II. AREAS OF FUNCTION Circle the numbers that describe the patient's current condition, using the table above as a guide.

1. Activities of Daily Living
- 0 1 2 3 4 5 Self care and hygiene (dressing, bathing, eating, cooking) 4
 - 0 1 2 3 4 5 Normal living postures/ambulation (sitting, lying, walking) 4
 - 0 1 2 3 4 5 Travel (driving, riding, flying) 4
 - 0 1 2 3 4 5 Non specialized hand activities (grasping, lifting, tactile discrimination) 4
 - 0 1 2 3 4 5 Sleep (restful sleep pattern) 4
 - 0 1 2 3 4 5 Social and recreational activities (consider pre-illness activities of the patient) 4
2. Social Functioning
- 0 1 2 3 4 5 Get along with others without behavioral extremes 4
 - 0 1 2 3 4 5 Initiate social contacts, negotiate and compromise 4
 - 0 1 2 3 4 5 Communicate clearly and effectively with others 4
 - 0 1 2 3 4 5 Interact and actively participate in group activities 4
3. Thinking, Concentration, Persistence and Pace
- 0 1 2 3 4 5 Comprehend/follow simple commands 4
 - 0 1 2 3 4 5 Apply common sense to carry out a task 4
 - 0 1 2 3 4 5 Ask simple questions, request assistance when needed 4
 - 0 1 2 3 4 5 Perform simple, routine, repetitive tasks 4
 - 0 1 2 3 4 5 Ability to abstract or understand concepts 4
 - 0 1 2 3 4 5 Maintain attention, concentration on a specific task and complete in a timely manner 4
 - 0 1 2 3 4 5 Memory, immediate and remote 4
 - 0 1 2 3 4 5 Judgment 4
 - 0 1 2 3 4 5 Problem solving and conceptual reasoning ability 4
 - 0 1 2 3 4 5 Perform daily tasks (including work) the patient performed prior to the injury or illness at a reasonable pace 4
 - 0 1 2 3 4 5 Ability to initiate decisions and perform planned action 4
4. Adaptation to Stress
- 0 1 2 3 4 5 Perform activities on schedule, be punctual 4
 - 0 1 2 3 4 5 Adapt to limits or standards 4
 - 0 1 2 3 4 5 Manage conflicts with others - negotiate, compromise 4
 - 0 1 2 3 4 5 Set realistic goals, has good autonomous judgment 4

Overall Impairment Rating (0 to 5): 4
Health Care Provider's Signature: [Signature] Speciality: Family Practice
FPP-DC

T. 2
K. Dean
JD



IBM
MEDICAL TREATMENT REPORT (MTR) FORM
IBM CONFIDENTIAL WHEN COMPLETED

TO BE COMPLETED BY EMPLOYEE:

Employee Name: Walter Tuwell Serial # 063821 Division Netelex
Date of Birth: 6/19/47 Job Assignment: Performance Analyst
Employee is responsible for any costs associated with the completion of this form, and for ensuring its return to IBM IHS (Integrated Health Services).
I authorize my health care provider (print name) Victoria Vasquez, NP to complete this form and to discuss this information with an IBM nurse and/or physician.
Employee Signature: W Tuwell Date: 4/7/14

TO BE COMPLETED BY THE HEALTH CARE PROVIDER:

I. DIAGNOSIS(ES) & ICD-9 CODE(S) (if this case involves a mental health issue, complete page two also): Sleep Disorder 307.41, Stress reaction 300.9

EDC if pregnancy: _____

II. DETAILED TREATMENT PLAN: (medications/dosages, tests, lab studies, referrals, treatment modalities, surgery/dates, etc.):
Paroxetine 30mg 1/2 tab po QD

Date of Next Appt: 4 wks

III. WORK ABILITY (Modified duty is available in most cases.)

Is the employee totally impaired for work? Yes No Estimated Return to Work Date: _____

(Fill in either "A" or "B" below as appropriate, but not both)

A. If totally impaired, give date total impairment began: 4/7/14 and explain in functional terms why the employee is unable to work: Sleep is still a major impairment. It is a

psych therapy to help with acute stress. This ongoing.

B. If NOT totally impaired, can the employee work with temporary modifications? Yes No

1) If yes, give start date of modifications: _____ Estimated end date of modifications: _____
Specify work place modifications requested: _____

2) If not, explain in functional terms why the employee is unable to work with modifications: _____

IV. TREATING HEALTH CARE PROVIDER INFORMATION: (NOTE: This is a legal document. Please sign and date it.)

Name (please print): VICTORIA VASQUEZ Specialty: Family Practice
Signature: [Signature] Date: 4/7/14
Address: 410 Woburn St, Reading MA 01867
Phone Number: 781-744-0600 Fax Number: 781-744-0543

When completed and signed by health care provider, fax to 919-543-0834 (IBM Integrated Health Services Center), or for assistance call 1-888-553-5752 option #2.

INCOMPLETE FORMS, INCLUDING THOSE NOT SIGNED AND DATED, WILL NOT BE PROCESSED, AND WILL BE RETURNED TO THE HEALTH CARE PROVIDER BEFORE DETERMINATION OF BENEFITS CAN BE MADE.

IBM MEDICAL TREATMENT REPORT - PSYCHIATRIC IMPAIRMENT RATING PORTION

(Only fill out this section if this case involves a psychiatric issue)

Employee Name: Walter Tavel Serial Number _____

I. LEVEL OF IMPAIRMENT: Please use the following rating numbers to specify the degree of impairment for each area of function noted in section II.

Rating Impairment:

- 0 No Impairment
- 1 Minimal Impairment
- 2 Mild Impairment
- 3 Moderate Impairment
- 4 Serious Impairment
- 5 Severe Impairment

II. AREAS OF FUNCTION Circle the numbers that describe the patient's current condition, using the table above as a guide.

1. Activities of Daily Living

- ① 1 2 3 4 5 Self care and hygiene (dressing, bathing, eating, cooking)
- ① 1 2 3 4 5 Normal living positions/ambulation (sitting, lying, walking)
- ① 1 2 3 4 5 Travel (driving, riding, flying)
- ① 1 2 3 4 5 Non-specialized hand activities (grasping, lifting; tactile discrimination)
- ① 1 2 3 4 5 Sleep (regular sleep pattern)
- ① 1 2 3 4 5 Social and recreational activities (consider pre-illness activities of the patient)

2. Social Functioning

- ① 1 2 3 4 5 Get along with others without behavioral extremes
- ① 1 2 3 4 5 Initiate social contacts, negotiate and compromise
- ① 1 2 3 4 5 Communicate clearly and effectively with others
- ① 1 2 3 4 5 Interact and actively participate in group activities

3. Thinking, Concentration, Persistence and Pace

- ① 1 2 3 4 5 Comprehend/obey simple commands
- ① 1 2 3 4 5 Apply common sense to carry out a task
- ① 1 2 3 4 5 Ask simple questions, request assistance when needed
- ① 1 2 3 4 5 Perform simple, routine, repetitive tasks
- ① 1 2 3 4 5 Ability to abstract or understand concepts
- ① 1 2 3 4 5 Maintain attention, concentration on a specific task and complete in a timely manner
- ① 1 2 3 4 5 Memory, immediate and remote
- ① 1 2 3 4 5 Judgment
- ① 1 2 3 4 5 Problem solving and conceptual reasoning ability
- ① 1 2 3 4 5 Perform daily tasks (including work) the patient performed prior to the injury or illness at a reasonable pace
- ① 1 2 3 4 5 Ability to initiate decisions and perform planned action

4. Adaptation to Stress

- ① 1 2 3 4 5 Perform activities on schedule, be punctual
- ① 1 2 3 4 5 Adapt to limits or standards
- ① 1 2 3 4 5 Manage conflicts with others - negotiate, compromise
- ① 1 2 3 4 5 Set realistic goals, has good autonomous judgment

Overall Impairment Rating (0 to 5): 3-4 GAF: _____

Health Care Provider's Signature: Natasha M. Villalobos Specialty: Family Practice

Volume I
Pages 1 to 143
Exhibits 1 to 21

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----x
WALTER TUVELL, :
 Plaintiff, :
 : vs. : Civil Action No.
 : 13-cv-11292-DJC
INTERNATIONAL BUSINESS :
MACHINES, INC., :
 : Defendant. :
-----x

Deposition of B. STEWART SNYDER, III, M.D., witness herein, called for examination by counsel for the Plaintiff in the above-entitled matter, pursuant to notice and the Federal Rules of Civil Procedure, the witness being duly sworn by Lisa A. Wheeler, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public in and for the State of North Carolina, taken at Jackson Lewis, P.C., 1400 Crescent Green, Cary, North Carolina, at 10:03 a.m., on March 19, 2014, and the proceedings being taken down by Stenotype by Lisa A. Wheeler and transcribed under her direction.

PRESENT:

On behalf of the Plaintiff:
ROBERT S. MANTELL, ESQ. (By phone)
Rodgers, Powers & Schwartz
18 Tremont Street
Boston, Massachusetts 02108
(617) 742-7010
rmantell@theemploymentlawyers.com

(Continued)

B. Stewart Snyder, III, M.D. - March 19, 2014

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1 Q. Okay. Now was there, in fact, a meeting
2 with the HR -- with HR and team?

3 A. Yes.

4 Q. Okay. When did that meeting take place?

5 A. I do not remember the exact date.
6 Sometime in that time frame of middle of September
7 2011.

8 Q. And who was present at that meeting?

9 A. I don't remember everybody that was there
10 but we did have IBM legal there so it's privileged.

11 Q. I see. Do you remember the name of the
12 lawyer?

13 A. No, I don't. I suspect it was an attorney
14 that we worked with quite a bit named Larry Bliss,
15 but I can't be absolutely certain of that.

16 Q. Okay. And was everyone else at that
17 meeting an IBM employee?

18 A. I believe so.

19 Q. Can you go to Exhibit 6 please.

20 (SNYDER EXHIBIT 6, E-mail String,
21 10/4/2011, Subject: Tuvell, was
22 marked for identification.)

23 MR. PORTER: The witness has been handed
24 Exhibit 6. He's going to review it and then let you

B. Stewart Snyder, III, M.D. - March 19, 2014

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1 know.

2 A. Okay. I've reviewed it.

3 Q. Do you recognize this document?

4 A. Yes.

5 Q. What is this document?

6 A. Another string of e-mails.

7 Q. Did you write the e-mail at the top of the
8 first page of Snyder Exhibit 6?

9 A. Yes.

10 Q. And when did you write that e-mail?

11 A. October 4th, 2011.

12 Q. And who did you write that e-mail to?

13 A. Kathleen Dean.

14 Q. Okay. And is it fair to say that you had
15 read the other e-mails attached to this and on -- on
16 subsequent pages when you sent that e-mail?

17 A. Yes.

18 Q. Now going to the last page, 4307 --

19 A. Okay.

20 Q. -- and it starts on the previous page and
21 then goes to the last page, is it fair to say that
22 that was an e-mail that you wrote?

23 A. Yes.

24 Q. And who did you write that e-mail to?

B. Stewart Snyder, III, M.D. - March 19, 2014

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1 A. Kathleen Dean.

2 Q. And when did you write that e-mail?

3 A. October 4th, 2011.

4 Q. And it says -- do you -- on the last page
5 it's -- do you see where it says, just wondered if
6 you had heard anything further on this case, any
7 more epistles to Sam, et al.

8 Do you see where -- where it says that?

9 A. Yes.

10 Q. Did you write that?

11 A. Yes.

12 Q. What did you mean to convey when you used
13 the word epistles?

14 A. Just had he written anything else to Sam.

15 Q. Is that a word you -- you often use in the
16 workplace?

17 A. Not infrequently.

18 Q. Who -- who were you referring to when you
19 talked about Sam?

20 A. Sam Palmisano, the CEO at that time.

21 Q. Now going to 4305 which I believe is the
22 third page of Exhibit 6 --

23 A. Okay.

24 Q. -- there's an e-mail from Ms. Dean to

B. Stewart Snyder, III, M.D. - March 19, 2014

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1 Mr. Tuvell dated September 21st, 2011, correct?

2 A. Yes.

3 Q. It says in the first sentence of that
4 e-mail, after consulting with our IBM physician
5 please have your licensed social worker, LSW,
6 complete the attached MTR form.

7 Do you see where it says that?

8 A. Yes.

9 Q. Is it fair to say that this statement
10 reflects a change of heart that a -- a specialist
11 was required to sign the MTR?

12 MR. PORTER: Objection to the form.

13 A. Yes.

14 Q. And are you the M -- IBM physician that Ms.
15 Dean refers to in this sentence?

16 A. As far as I know, yes.

17 Q. And did you, in fact, tell Ms. Dean that
18 the signature of a licensed social worker would be
19 sufficient on the MTR?

20 A. Yes.

21 Q. And when did you tell Ms. Dean that?

22 A. I'm not certain but probably within the
23 preceding few days before this e-mail.

24 Q. And why did you change your mind?

B. Stewart Snyder, III, M.D. - March 19, 2014

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1 A. I didn't see that it was productive to
2 continue to try and get him to see a psychiatrist
3 because it was becoming obvious that he had no
4 interest in doing that and we just elected to go
5 ahead and certify his STD regardless as long as we
6 continued to get input from a -- a healthcare
7 provider that has expertise in psychiatric problems.

8 Q. Did you make any inquiry with respect to
9 Mr. Tuvell's licensed social worker, her competence
10 or qualifications?

11 A. No.

12 Q. Did you consult with anyone concerning your
13 change of heart?

14 A. Not that I can recall.

15 Q. Did anyone instruct you to change the
16 requirement that a specialist sign the MTR?

17 A. Not that I can recall.

18 Q. So it was your decision?

19 A. Far as I can recall, yes.

20 Q. Now going to the e-mail above that on
21 4305, this is an e-mail from Mr. Tuvell to Ms. Dean,
22 correct?

23 A. Yes.

24 Q. Okay. And going to the third paragraph of

B. Stewart Snyder, III, M.D. - March 19, 2014

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1 4305 it says, also, you mention October 17th but
2 currently the abusive CNA process is requiring me to
3 report back to work under Dan Feldman and I don't
4 believe that will be possible as attested to by my
5 physician and LSW.

6 Do you see where it says that?

7 A. Yes.

8 Q. Is it fair to say you understood
9 Mr. Tuvell's position was that he was medically
10 unable to return to work under Dan Feldman?

11 MR. PORTER: Objection to the form.

12 A. That was not my understanding.

13 Q. What was your understanding?

14 A. My understanding that -- was that he had a
15 psychiatric condition and he was not able to return
16 to work because of that condition. The nature and
17 source of that condition, especially the reason for
18 it, whether it had anything to do with Dan Feldman
19 or not, I'm not -- I'm not saying anything about
20 that here, okay? Those are -- those -- I -- I don't
21 agree with what you just asked.

22 Q. I'm -- all I'm asking you is your
23 understanding of Mr. Tuvell's position.

24 A. I understand that his position -- he

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CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)
COUNTY OF CABARRUS)

I, LISA A. WHEELER, RPR-CRR, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

This, the 26th day of March, 2014.

LISA A. WHEELER, RPR-CRR
Notary Public in and for
County of Cabarrus
State of North Carolina
Notary Public Number 19981350007

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WALTER TUVELL,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 13-cv-11292-DJC
)	
INTERNATIONAL BUSINESS MACHINES,)	
INC.,)	
)	
Defendant.)	
)	

PLAINTIFF'S RULE 26 DISCLOSURE STATEMENT

Plaintiff Walter Tuvell hereby submits his Rule 26 Disclosure Statement.

I. Persons Likely to Have Discoverable Information Relevant to the Claims

- a. Fritz Knabe has knowledge of discrimination against and harassment of Plaintiff, as well as Plaintiff's qualifications;
- b. Daniel Feldman has knowledge of discrimination against and harassment of Plaintiff, Plaintiff's requests for reasonable accommodation, and retaliation against Plaintiff, as well as Plaintiff's qualifications;
- c. Russell Mandel has knowledge of discrimination against and harassment of Plaintiff, Plaintiff's requests for reasonable accommodation, and retaliation against Plaintiff;
- d. John Metzger has knowledge of discrimination against and harassment of Plaintiff, Plaintiff's requests for reasonable accommodation, and retaliation against Plaintiff;
- e. Lisa Due has knowledge of discrimination against and harassment of Plaintiff Plaintiff's requests for reasonable accommodation, and retaliation against Plaintiff.

- f. Larry Bliss has knowledge of discrimination against and harassment of Plaintiff, Plaintiff's requests for reasonable accommodation, and retaliation against Plaintiff;
- g. Diane Adams has knowledge of discrimination against and harassment of Plaintiff, Plaintiff's requests for reasonable accommodation, and retaliation against Plaintiff;
- h. Kathleen Dean has knowledge of discrimination against and harassment of Plaintiff, Plaintiff's requests for reasonable accommodation, and retaliation against Plaintiff.
- i. Christopher Kime has knowledge of discrimination against, retaliation against, and harassment of Plaintiff;
- j. Kelli-ann McCabe has knowledge of discrimination against and harassment of Plaintiff, Plaintiff's requests for reasonable accommodation, and retaliation against Plaintiff;
- k. Sujatha Mizar has knowledge of harassment of Plaintiff and discriminatory treatment.
- l. Al Pfluger, Nurse at IBM, knowledge of Plaintiff's disability;
- m. Steve Lubars, witness to Knabe's yelling at Plaintiff
- n. Rich Title, witness to Knabe's yelling at Plaintiff,
- o. Jeff Keller, witness to Knabe's yelling at Plaintiff,
- p. Huamin Chen, witness to Knabe's yelling at Plaintiff
- q. Joe Shkolnik has knowledge that Mr. Feldman knew that Plaintiff did not use Windows or Excel.
- r. Felix Santiago has knowledge that Mr. Feldman knew that Plaintiff did not use Windows or Excel.
- s. Larry Lutz has knowledge that Mr. Feldman knew that Plaintiff did not use Windows or Excel.
- t. Ashish Deb has knowledge that Mr. Feldman knew that Plaintiff did not use Windows or Excel.
- u. Sam Palmisano, has knowledge of Plaintiff's complaint(s) and IBM's response;
- v. Virginia Rometty, has knowledge of Plaintiff's complaint(s) and IBM's response;
- w. Steve Mills, has knowledge of Plaintiff's complaint(s) and IBM's response;

- x. Randy McDonald (HR), has knowledge of Plaintiff's complaint(s) and IBM's response;
- y. Robert Weber (Legal) , has knowledge of Plaintiff's complaint(s) and IBM's response;
- z. Richard Kaplan (Chief Trust and Compliance Officer), has knowledge of Plaintiff's complaint(s) and IBM's response;
- aa. Lynea St. Pier (Confidentially Speaking Ombudsperson), has knowledge of Plaintiff's complaint(s) and IBM's response;
- bb. Arvind Krishna, has knowledge of Plaintiff's complaint(s) and IBM's response;
- cc. Robert LeBlanc, has knowledge of Plaintiff's complaint(s) and IBM's response;
- dd. Victoria Vasquez, last known address Middlesex Family Practice PC, 46 Woburn St., Reading, MA 01867, nurse practitioner who signed some of Plaintiff's MTRs
- ee. Frank Guastella Anderson, 70A Junction Square Dr., Concord, MA 01742, 978 371-7474, has knowledge of Plaintiff's disability.
- ff. Stephanie Ross, 742 Mass. Ave., Arlington, MA 02476, 781 646-6640 has knowledge of Plaintiff's disability, requests for reasonable accommodation, and emotional distress stemming from Defendants' conduct.
- gg. Steve Frazier, 384 South 400 West, Suite 200, Lindon UT 84042, 571 314-4737, retaliation against Plaintiff with respect to treatment of his computer.
- hh. Linda Tuvell, Plaintiff's spouse, concerning emotional distress.

II. Documents That The Plaintiff May Use to Support His Claim

On or about July 25, 2012, Plaintiff provided Defendant with two thumb drives containing responsive materials, including without limitation documents marked TUVELL1-1516. In addition, Plaintiff hereby provides Defendant with additional documents labelled TUVELL1517-1526. Finally, Plaintiff may use position statements provided by IBM and individual Respondents to the MCAD, which are already in Defendant's possession.

III. Computation of Damages

Plaintiff will seek [1] back pay and benefits, from the commencement of his short term disability leave until March 12, 2012; [2] emotional distress damages, which will be determined by a jury; [4] punitive damages, which will be determined by a jury; [5] pre- and post judgment interest, at both the State and Federal rate, whichever is higher; [6] attorneys fees and costs, which are continuing.

Plaintiff believes that his lost salary to be approximately \$21,510.

IV. Applicable Insurance Agreements

None.

The Plaintiff
By his attorneys,

CERTIFICATE OF SERVICE
I hereby certify that a true copy of the above document was
served upon the attorney of record for each other party
by mail (or hand) on 8/9/13





Robert S. Mantell
BBO# 559715
Rodgers, Powers & Schwartz LLP
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Tuvell rule 26 disclosure

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS



WALTER TUVELL,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES,
INC.,

Defendant.

C. A. No. 13-cv-11292-DJC

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

A. PRELIMINARY STATEMENT

This is an action in law and equity for damages and other relief based on retaliation, handicap discrimination, failure to reasonably accommodate, harassment, and other forms of employment discrimination. This case is brought pursuant to G.L. c. 151B, §§ 4(1), 4(16), 4(4), 4(5), other statutory provisions and tort claims.

B. PARTIES TO THE ACTION

1. Mr. Walter Tuvell, Plaintiff, is a White male, born in 1947. He has a BS from the Massachusetts Institute of Technology, and a PhD from the University of Chicago, both in Mathematics. He has had a long, diverse and successful career of nearly thirty years as an architect/designer/developer in the field of computer software.

2. Defendant International Business Machines, Inc. (IBM) is a corporation with one or more places of business located in Massachusetts, including in Cambridge and Marlboro, Massachusetts. At all times relevant, Defendant had and has more than six employees, and thus is an "employer" as defined in G.L. c. 151B, § 1(5).

3. Mr. Russell Mandel was and is IBM's Director of the Concerns and Appeals Program, within the Human Resources organization.

4. Mr. Daniel Feldman is an employee of IBM.

5. Mr. Fritz Knabe was once, but is no longer, an employee of IBM.

C. JURISDICTION AND VENUE

6. All jurisdictional prerequisites to a civil action have been met. On or about March 12, 2012 and September 18, 2012, Mr. Tuvell filed charges of discrimination with the Massachusetts Commission Against Discrimination. On or about February 19, 2013, the EEOC issued Right to Sue letters for the claims raised herein.

7. Venue in this Court is proper pursuant to G.L. c. 151B, § 9, ¶ 2.

D. FACTUAL ALLEGATIONS

8. Mr. Tuvell joined Netezza Corporation on November 3, 2010, working in the Performance Architecture Group under Dan Feldman. Mr. Tuvell also reported in dotted line fashion to Fritz Knabe.

9. In or about January 2011, IBM acquired Netezza, and Mr. Tuvell, Mr. Feldman and Mr. Knabe became employees of IBM.

10. Mr. Tuvell is a qualified disabled individual under the Americans With Disabilities Act, and its Massachusetts counterpart, G.L. c. 151B, § 4(16). Mr. Tuvell suffers from Post-Traumatic Stress Disorder (PTSD). He was diagnosed with PTSD in or about 2001, which remains his primary diagnosis, and has also been diagnosed with Acute Stress Reaction Adjustment Disorder with Mixed Anxiety and Depression. Mr. Tuvell has been treated with psychotherapy and medication to treat his illness.

11. During intermittent, episodic periods of time in which Mr. Tuvell's condition is in its acute phase, his sleep is limited to approximately two hours per night, he cannot eat, and he experiences heightened anxiety. During these periods of time, Mr. Tuvell experiences very severe emotional reactions to adverse actions. Mr. Tuvell experiences flashbacks causing him to dwell upon and re-experience extremely stressful experiences from his past. Mr. Tuvell, when in the grip of this all-consuming fear and anxiety, is unable to work. He becomes a victim of obsessive thoughts. Mr. Tuvell, in this condition, becomes fearful that he will be attacked, psychologically. To be clear, however, although Mr. Tuvell experiences a sense that he is in profound danger, he has never threatened or acted out violently against anyone in response, and has never had any inclination to do so. In its untreated form, Mr. Tuvell's medical impairments would be completely debilitating in times of severe stress.

12. Beginning in December 2010, Mr. Feldman was notified of Mr. Tuvell's disability, through observations of Mr. Tuvell's demeanor, and through discussions in which Mr. Tuvell described his challenges. Mr. Feldman understood Mr. Tuvell's potential for extreme anxiety and sensitivity in the context of an abusive workplace environment, and the diagnosis of PTSD.

13. IBM required Mr. Tuvell and its other employees to report unlawful conduct. IBM's written policies, and contractual obligation to Mr. Tuvell, requires IBM to fully and fairly investigate internal complaints brought to its attention by Mr. Tuvell, and to fairly and reasonably resolve such complaints. IBM's written policies, and contractual obligation to Mr. Tuvell, also requires IBM to fully investigate, and fairly respond to requests for reasonable accommodation of handicap.

14. On or about May 18, 2011, Mr. Knabe asserted to Mr. Feldman, in Mr. Tuvell's absence, that Mr. Tuvell had failed to produce that day certain Excel graphics as instructed. These assertions were entirely false. In fact, Mr. Knabe had not instructed Mr. Tuvell to produce any work at all that day, much less produce any Excel graphics. Later in the day, Mr. Feldman reported Mr. Knabe's accusation to Mr. Tuvell, and supported Mr. Knabe's accusation, dismissing Mr. Tuvell's protests. Mr. Knabe's and Mr. Feldman's conduct constitutes harassment based on sex, age, and/or race.

15. On June 8, 2011, Mr. Knabe yelled loudly at Mr. Tuvell in front of co-workers, asserting that Mr. Tuvell failed to produce certain specified work items that day as ordered. These assertions were entirely false. In fact, Mr. Knabe had ordered Mr. Tuvell to produce certain different specified work items that day, and Mr. Tuvell had indeed produced these latter work items that day, as Mr. Knabe was already fully aware. Mr. Knabe's conduct constitutes harassment based on sex, age and/or race. On June 10, 2011, Mr. Knabe acknowledged in writing that he had indeed raised his voice at Mr. Tuvell.

16. Mr. Tuvell spoke to Mr. Feldman about Mr. Knabe's May 18 and June 8 conduct, and repeatedly disputed Mr. Knabe's (and now Mr. Feldman's) false assertions that he had failed to provide responses to work assignments. These conversations constitute protected activity under c. 151B. Mr. Feldman responded with psychological abuse, reflexively taking Mr. Knabe's side in the conflict without basis, refusing to give Mr. Tuvell credence, refusing to investigate into the matter, refusing to respond to Mr. Tuvell's repeated inquiries for more detail concerning his alleged misconduct, and refusing Mr. Tuvell's repeated requests for a three-way meeting with Mr. Feldman and Mr. Knabe to clear the air and to make plain what Mr. Tuvell's work expectations had actually been. Mr. Feldman's conduct and omissions constituted harassment based on disability and/or retaliation based on Mr. Tuvell's protected activity.

17. On June 10, 2011, Mr. Tuvell met with Mr. Feldman, who reported having met with Mr. Knabe the previous day. Mr. Feldman asserted that it was now too late to try patching over the difficulties with Knabe, and that Mr. Tuvell and Mr. Knabe could no longer work together. Mr. Feldman indicated that Mr. Knabe called Mr. Tuvell a bully and a liar, which was a false statement. Mr. Knabe's comments constitute harassment motivated by retaliation, age, gender and/or racial discrimination.

18. Mr. Feldman demoted Mr. Tuvell from the highest level work within the Performance Architecture group to the lowest. Mr. Feldman required Mr. Tuvell to switch job assignments with Ms. Sujatha Mizar, a woman of East Asian heritage, who

was far under forty years of age. This demotion constituted both harassment and a tangible job action, based on retaliation, handicap, age, gender and/or race.

19. Mr. Tuvell was far more qualified for the high-level job assignment taken over by Ms. Mizar, as he has a PhD, and she does not, and he had decades of much more relevant experience.

20. On June 12, 2011, Mr. Feldman required that all of Mr. Tuvell's further communications with him must be made in the presence of Human Resources representatives, citing Mr. Tuvell's filing of a complaint, and Mr. Feldman's knowledge of Mr. Tuvell's prior history of a single, successful ADR proceeding with a prior employer. Mr. Feldman's unilateral imposition of this stringent, and unjustified workplace limitation constitutes a tangible adverse action and/or harassment based on retaliation, disability, age, gender and/or race. In addition, after months of addressing Mr. Tuvell as "Walt," Mr. Feldman addresses his June 12, 2011 e-mail to "Dr. Tuvell." This change of tone further supports a claim of a hostile work environment based on retaliation, disability, age, gender and/or race.

21. On June 13, 2011, Mr. Tuvell met with Ms. Kelli-ann McCabe, HR Representative, and on June 14, 2011, Mr. Tuvell e-mailed Ms. McCabe. Mr. Tuvell complained about the harassment that he was experiencing from Mr. Knabe, and these communications are protected conduct under the ADA and c. 151B. Furthermore, Mr. Tuvell informed Ms. McCabe during these communications that he had PTSD, and placed IBM on further notice that he had a disability.

22. On or about June 15, 2011, Mr. Feldman demands that Mr. Tuvell submit a report on the transition of work between Mr. Tuvell and Ms. Mizar, despite the fact that Mr. Tuvell had nothing to add to the report that Ms. Mizar had already submitted on the same subject. This conduct helps to constitute a hostile work environment based on handicap, retaliation, age, gender and race. On one or more earlier occasions in November-December 2010, prior to Mr. Tuvell's complaint, Mr. Tuvell inadvertently failed to file one or more weekly reports to Mr. Feldman, but Mr. Feldman did nothing in response.

23. On or about June 15, 2011, Mr. Tuvell complains to Mr. Feldman, Ms. McCabe and Ms. Diane Adams that the requirement for duplicative transition reports constitutes continued harassment, and Mr. Tuvell again complains that he is being subjected to age, race and gender discrimination, as well as retaliatory harassment. This communication constitutes protected activity under c. 151B and the ADA.

24. On June 16, 2011, at 10:44 AM, Mr. Tuvell communicates with Ms. Adams and Ms. McCabe, again referencing his PTSD and his vulnerability to harassment, and states that it is becoming unfeasible for him to continue working with Mr. Feldman, due to fears of future harassment. At 3:47 PM the same day, Mr. Tuvell requests the reasonable accommodation of being removed from Mr. Feldman's managerial oversight. On this, and many subsequent occasions, some of which will be noted in this complaint, Mr.

Tuvell identifies himself as someone with a disability, and that his disability prevents Mr. Tuvell from continuing to work with Mr. Feldman.

25. On June 16, 2011, at 3:58 PM, Mr. Tuvell informs Ms. Adams that the idea of continuing to work with Mr. Feldman is making him feel sick. This communication is protected under G.L. c. 151B and the ADA.

26. On June 16, 2011, Mr. Feldman requires, on one day's notice, that Mr. Tuvell independently (without consulting others) establish a detailed, daily schedule for the next three upcoming weeks on all four projects that he is taking over for Ms. Mizer, based solely on Ms. Mizer's short "one-line" descriptions of her projects. Mr. Tuvell is still on a learning curve with respect for the new projects, and has never set a daily schedule for three weeks in the future, let alone for unfamiliar projects. Mr. Tuvell requests an example of such a schedule from Mr. Feldman, but none is forthcoming. All of this constitutes continuing harassment based on handicap, retaliation, age, gender and/or race.

27. On June 17, 2011, Mr. Tuvell complains of continuing harassment to Mr. Feldman, Ms. McCabe and Ms. Adams. Mr. Tuvell also complains of the fact that he is being undermined professionally, as his important contributions are being taken over by Ms. Mizar, placing her in the position of getting the credit for his ideas and work. This communication is protected conduct under G.L. c. 151B, and the ADA.

28. On June 23, 2011, Mr. Tuvell complains about continuing harassment and discrimination, and notes that the harassment/discrimination has exacerbated his medical symptoms, and that he is nearly incapacitated by PTSD, a disability known to Defendant. Mr. Tuvell requests that his disability be accommodated by having him work for someone other than Mr. Feldman. This communication is protected conduct under G.L. c. 151B, and the ADA, both as opposition to discrimination and as a request for reasonable accommodation.

29. On various occasions, including June 24, 2011 and June 28, 2011, Mr. Tuvell requests job modifications such that he no longer must interact with Mr. Feldman, as a reasonable accommodation to his disability. Mr. Tuvell notes that such an accommodation would be a preferable reasonable accommodation to the grant of disability leave. Such communications constitute protected conduct under the ADA and c. 151B, and represent requests for reasonable accommodation.

30. On June 27, 2011, Mr. Tuvell complains of discrimination, harassment, and retaliation, based on Mr. Feldman's directive that Mr. Tuvell independently draft a detailed, day-by-day, three week schedule involving four new technology projects on one day's notice. Mr. Feldman had never required such a schedule of Mr. Tuvell previously. On information and belief, Mr. Feldman did not demand that Ms. Mizar, who took over Mr. Tuvell's project, provide a similar plan.

31. On June 28, 2011, Mr. Tuvell twice complains that working with Mr. Feldman, and the constant harassment is destroying Mr. Tuvell's health, that he does not feel safe

around Mr. Feldman, and requesting the accommodation of being assigned away from Mr. Feldman. These communications are protected conduct under G.L. c. 151B, and the ADA, and represent requests for reasonable accommodation to be separated from Mr. Feldman. On these occasions, as well as the many other times when Mr. Tuvell sought similar relief, IBM failed in its obligation to reasonably accommodate Mr. Tuvell.

32. On June 29, 2011, Mr. Tuvell's internal complaint is rejected by Ms. Lisa Due. IBM conducted an insufficient and deferential investigation of Mr. Tuvell's complaint, and failed in its obligation to remediate unlawful conduct brought to its attention.

33. Ms. Due suggests that Mr. Tuvell look for another job within IBM using the Global Opportunity Marketplace (GOM) job system. On June 29, 2011, Mr. Tuvell escalates the complaint to Mr. Mandel, through the IBM Concerns and Appeals process. This action constitutes protected conduct under G.L. c. 151B, and the ADA, and constitutes a request for reasonable accommodation.

34. On June 29, 2011, Mr. Tuvell requests that he be reassigned away from Mr. Feldman due to his retaliatory conduct. This communication represents protected opposition and protected request for reasonable accommodation.

35. On June 30, 2011, Mr. Feldman harasses Mr. Tuvell with respect to requiring unnecessary status updates. This constitutes continuing harassment based on handicap, retaliation, age, gender and race. Mr. Tuvell complains to Mr. Feldman about the harassment. This complaint constitutes protected conduct under G.L. c. 151B, and the ADA.

36. On June 30, 2011, Mr. Tuvell again complains of the harassing demotion, which is protected speech under the ADA and c. 151B. In response, Mr. Feldman subjected Mr. Tuvell to further retaliatory harassment, by attacking Mr. Tuvell's professionalism.

37. As a result of Mr. Feldman's retaliatory harassment, Mr. Tuvell experiences severe symptoms from PTSD, as exacerbated by his workplace stress, and is not able to come to work in the office. Later on June 30, 2011, Mr. Tuvell again complains about improper actions, and harassment taken against him, which constitutes protected conduct under the ADA and G.L. c. 151B.

38. On June 30, 2011, Mr. Tuvell informs Mr. Feldman that Mr. Tuvell may have to petition to work at a remote work location (his home) away from Mr. Feldman for medical reasons. This constitutes a protected request for reasonable accommodation.

39. On July 1, 2011, Mr. Tuvell e-mails Mr. Mandel regarding his complaints about discrimination and retaliation, and asks to be moved away from Mr. Feldman and Mr. Knabe, and the hostile work environment. This constitutes protected opposition and a protected request for reasonable accommodation.

40. On July 5, 2011, Mr. Tuvell e-mails Mr. Mandel, stating that Mr. Tuvell fears working with Mr. Feldman, based on Mr. Feldman's record of retaliation. Mr. Tuvell states that he will do his best to continue to work with Mr. Feldman, but that he is doing so under protest. This communication represents protected opposition and a protected request for reasonable accommodation.
41. On July 5, 2011, Mr. Feldman falsely implies to Mr. Tuvell that Mr. Tuvell engaged in unprofessional and/or disrespectful conduct, participated in an inappropriate work environment, and/or failed to follow management direction (and referencing an alleged failure to develop the aforementioned plan). This communication represents harassment based on race, age, gender, handicap, and retaliation for engaging in protected conduct.
42. On July 5, 2011, Mr. Tuvell writes to Mr. Mandel, requesting that he be removed from a hostile work environment, and documenting Mr. Mandel's refusal to do so. Mr. Tuvell notes the difficulty he is experiencing working with Mr. Feldman, but promising to try his best. Mr. Tuvell's communication is protected conduct under the ADA and c. 151B.
43. On July 6, 2011, Mr. Tuvell specifically asks for guidance in preparing the type of plan that is requested of him, but he never receives substantive guidance. The failure of Mr. Feldman to respond demonstrates a recognition that the request for the unusual plan represented harassment and retaliation, and did not reflect a genuine operational requirement.
44. On July 6, 2011, when communicating about an aspect of his work, Mr. Tuvell wrote in an e-mail to Mr. Feldman and one other colleague, "You can easily find it by searching the wiki for "blktrace", or if you're lazy you can just click this link." On July 11, 2011, Mr. Feldman capriciously asserts that Mr. Tuvell's wholly innocent and colloquial use of the word "lazy" is inappropriate. Mr. Feldman's overly critical scrutiny constitutes harassment based on race, age, gender, retaliation and/or handicap.
45. While Mr. Tuvell initially apologized for using the word "lazy," after some thought, he understands that no supervisor, in good faith, could have possibly interpreted his light-hearted use of the term "lazy" in a negative fashion. On July 20, 2011, Mr. Tuvell notes in an e-mail that no apology had been necessary, and notes that his psychological issues had prevented him from advocating for himself earlier. Mr. Tuvell's communication constitutes protected opposition to unlawful harassing conduct.
46. On August 3, 2011, Mr. Tuvell meets with Mr. Feldman. Mr. Feldman asks Mr. Tuvell what he was scheduling to do next. Mr. Tuvell stated that he intended to spend some reasonable time working on his internal complaint, as the two had agreed previously. Mr. Feldman stated that Mr. Tuvell was now forbidden to work on the complaint. Mr. Tuvell's reasonable efforts to utilize some work time, without jeopardizing his work product, to prepare his opposition to unlawful work conditions represents protected conduct under the ADA and c. 151B, and Mr. Feldman's refusal to

permit Mr. Tuvell any time for that purpose is per se retaliation, and exhibits a retaliatory mindset. In reply, Mr. Tuvell then said, in a normal tone of voice, which expressed a slight tinge of surprise and exasperation, "Now wait a minute, Dan." At that point, Mr. Feldman falsely accused Mr. Tuvell of yelling, and threatened him with termination if he yelled again. This conduct constituted further harassment based on retaliation, handicap, race, gender and/or age.

47. At the August 3, 2011 meeting, Mr. Feldman falsely asserts that the lighthearted line about laziness was insulting. This conduct constitutes further harassment based on retaliation, handicap, race, gender and/or age.

48. At the August 3, 2011 meeting, Mr. Feldman presented Mr. Tuvell with a Formal Warning Letter, based on Mr. Tuvell's allegedly disruptive comments, including the "lazy" comments, and the explanatory e-mail of July 20, 2011. The Formal Warning Letter, which threatened termination without benefits for future violations was both a tangible job action, and continued harassment, based on retaliation, handicap, race, gender and/or age.

49. Because Mr. Tuvell was already experiencing symptoms of his disability at the time, having just been previously been accused of another false firing offense of yelling, he was physically unable to visualize the contents of the warning letter—he could only see a white rectangle with indistinct black lines. Mr. Tuvell placed the letter on the floor beside his chair, and politely stated that he would read it later. Mr. Tuvell then fainted in his chair, was unconscious for an un-determined period of time, and woke up covered in sweat, very dizzy and disoriented. After Mr. Tuvell recovered consciousness, the letter was no longer on the floor; it appears that Mr. Feldman picked it up. Mr. Feldman offered no assistance to Mr. Tuvell during this episode.

50. On August 3, 4, and 5, 2011, Mr. Tuvell complained to Mr. Mandel and Ms. Adams about continuing retaliation and harassment, including the fact that Mr. Feldman had forbidden the use of time to compile an internal complaint/appeal, and Mr. Tuvell requested emergency relief. These communications were protected conduct under the ADA and c. 151B.

51. On August 5, 2011, Mr. Tuvell notes that if he is subject to discipline for using the word lazy, then others should be disciplined for stating that a coworker's "raison d'être is the regression test," under a similar level of hyper-scrutiny. Mr. Tuvell further noted that the subject of this statement is not Caucasian, and that he might be the victim of discrimination. Mr. Tuvell's communication is protected conduct under c. 151B.

52. On August 5, 2011, Mr. Mandel replies, saying that IBM does not accept third party complaints, and that if the co-worker is offended by the "raison d'être" comment, he will have to file himself. Mr. Mandel's statement is false and pretextual, as IBM does accept third party complaints.

53. The harassment, retaliation and disparate treatment caused an exacerbation of Mr. Tuvell's PTSD symptoms. As a result, Mr. Tuvell began to feel that he was medically incapable of reporting to work. On August 11, 2011, Mr. Tuvell e-mailed Kathleen Dean, of IBM's Integrated Health Services, stating that he has come down with a medical condition, wants to know about the short term disability (STD) process, and requests a longer term solution, including an accommodation. This is a protected communication demonstrating notice of need of reasonable accommodation.

54. On August 11, 2011, Mr. Tuvell informs Mr. Feldman that he was taking sick days until his request for short term disability is acted upon. Mr. Tuvell also informed Mr. Feldman that Mr. Tuvell is seeking an accommodation. This is a protected communication requesting reasonable accommodation, and constituting notice of a need of reasonable accommodation.

55. In or about mid-August, 2011, IBM receives a Medical Treatment Report concerning Mr. Tuvell, from Mr. Tuvell's medical care-giver, in support of his STD application. The report states that Mr. Tuvell is experiencing a sleep disorder and stress reactions, as a result of which he is totally impaired with respect to performing his job responsibilities.

56. On August 17, 2011, IBM certifies Mr. Tuvell's STD status, and accords him the reasonable accommodation of STD leave. While the leave constituted one type of accommodation, it was inadequate and inappropriate, since a different, available reasonable accommodation, which would have preserved Mr. Tuvell's full salary, and equal opportunity to participate in, and excel in the workplace, would have been to simply stop the harassing and/or retaliatory conduct, and/or assign Mr. Tuvell to work with a person who did not exacerbate Mr. Tuvell's medical symptoms.

57. On August 18, 2011, pursuant to IBM policy, Mr. Tuvell files his Corporate Open Door Filing, with IBM Executive Office Staff, in which he complains about unlawful discrimination. This filing represents protected opposition under c. 151B and the ADA. However, all members of the Executive Office improperly refuse to consider it, instead sending it down the chain to Mr. Mandel, despite Mr. Tuvell's clearly stated protestations that Mr. Mandel has disqualified himself from investigating this case, because of Mr. Mandel's prior false representations to Mr. Tuvell concerning IBM's non-consideration of third party complaints.

58. On August 25, 2011, Mr. Mandel informs Mr. Tuvell that Mr. Mandel will not finalize his investigation of Mr. Tuvell's complaint until Mr. Tuvell is back from STD leave. Mr. Mandel's unilateral decision to disadvantage Mr. Tuvell on the basis of Mr. Tuvell's taking disability leave, constitutes handicap discrimination, retaliation for taking reasonable accommodation, and otherwise constitutes retaliatory harassment.

59. Given that Mr. Tuvell was forced, medically, out of the workplace, due to Mr. Feldman's discriminatory and retaliatory conduct (as well as due to IBM's failure to accord appropriate reasonable accommodation), Mr. Mandel's refusal to fully address

Mr. Tuvell's complaint until he returns to work further victimizes Mr. Tuvell. It constitutes an unlawful, tangible job action, as well as harassment based on handicap, race, age and/or gender.

60. On August 25 and 31, 2011, Mr. Tuvell opposes Mr. Mandel's retaliatory and harassing refusal to complete the investigation of Mr. Tuvell's complaints while Mr. Tuvell remains on disability leave. Mr. Tuvell's communications constitute protected conduct under c. 151B and the ADA.

61. On September 4, 2011, Mr. Tuvell files a further formal complaint (Addendum II to his original complaint) based on Mr. Mandel's refusal to finalize the investigation of the complaint during the pendency of Mr. Tuvell's disability leave. This communication constitutes protected activity under c. 151B and the ADA.

62. On September 6, 2011, Mr. Tuvell discovers that his Netezza Internet VPN access to the Netezza network has been rescinded. Mr. Tuvell inquires about the lack of access. On September 7, 2011, Mr. Mandel explained that access had been denied during the pendency of Mr. Tuvell's STD leave. Other IBM employees on STD do not have their computer access cut off. In fact, corporate policy dictates that employees on STD retain normal employee rights and privileges. This conduct constitutes a tangible job action, as well as continued harassment based on Mr. Tuvell's use of reasonable accommodation, his request(s) for reasonable accommodation, opposition to unlawful activities, his handicap, his age, race and/or gender.

63. On September 7, 2011, Mr. Tuvell opposes IBM's discriminatory and/or retaliatory decision to deny him VPN access. This communication constitutes protected conduct under c. 151B and the ADA.

64. The continued harassment, discrimination and/or retaliation exacerbates Mr. Tuvell's medical condition.

65. On or about September 7, 2011 and October 12, 2011, IBM receives additional medical documentation from Mr. Tuvell's medical care-givers supporting Mr. Tuvell's disability leave. The October 2011 documentation states that "without safe resolution of current hostile work environment without fear of reprisals . . . symptoms will persist." Further medical documentation filed with IBM in or about November 2011 states, "pt. [patient] continues to experience intense triggering of symptoms with any reference to work environment and incident of demotion and lack of investigation." Based on this documentation, IBM approves continued STD leave for Mr. Tuvell, but continues to refuse Mr. Tuvell the reasonable accommodation of not working for Mr. Feldman.

66. On September 14, 2011, Mr. Mandel confirms that Mr. Tuvell would be prevented from entering IBM facilities while he is out on STD leave. On information and belief, IBM written policy rejects such discrimination and other IBM employees on disability leave are not prevented from entering IBM facilities. This act constitutes both a tangible job action, and continued harassment. It is based on retaliation for Mr.

Tuvell's request and/or availment of the reasonable accommodation of disability leave, his oppositions to unlawful conduct, his race, age and/or gender.

67. On September 14, 2011, Mr. Tuvell e-mails his opposition to the discriminatory and/or retaliatory exclusion from the workplace. This communication is protected under c. 151B and the ADA.

68. On September 21, 2011, based on IBM's inaction on his internal complaint, Mr. Tuvell escalates his complaint to Richard Kaplan, Chief Trust and Compliance Officer for IBM. This communication is protected conduct under c. 151B and the ADA. The complaint to Mr. Kaplan is improperly forwarded by IBM back to Mr. Mandel.

69. On October 5, 2011, Mr. Tuvell receives from Mr. Feldman a notification that after thirteen weeks of STD medical leave, his benefits will be reduced to 66 2/3 % of his usual salary. On October 5, 2011, Mr. Tuvell responds, and objects to the reduction of pay. Mr. Tuvell again identifies himself as disabled under the ADA, and requested reasonable accommodation. Mr. Tuvell pointed out that he had requested on a number of occasions the reasonable accommodation of being separated from the hostile conditions that were causing his medical symptoms. Mr. Tuvell objected to IBM's continued failure to accord him reasonable accommodation of non-discriminatory and non-retaliatory workplace conditions. Mr. Tuvell further notified IBM that its reduction of benefits constituted an adverse action, because it was capable of making reasonable accommodation that permitted Mr. Tuvell's full participation in the workplace, and full compensation, but it was refusing to make such accommodation. This request for reasonable accommodation was protected under the ADA and c. 151B.

70. On October 10, 2011, Mr. Mandel rejected the request for a change of supervisor as an accommodation for Mr. Tuvell's medical condition, at this and previous points. Mr. Mandel suggests that as an alternative accommodation, Mr. Tuvell could himself utilize the Global Opportunity Marketplace (GOM), which lists IBM's available internal job opportunities, in order to find a new position. The denial of a change of supervisors is a violation of the obligation to reasonably accommodate Mr. Tuvell's disability. Furthermore, IBM had, under the ADA, at this point, an affirmative obligation to search its own vacant positions, and reassign Mr. Tuvell to a position for which he qualified. Mr. Mandel's suggestion that Mr. Tuvell make his own search for a vacant position for transfer, through a process that was available to all IBM employees regardless of disability status, was inadequate given the ADA's requirement to proactively reassign Mr. Tuvell to a vacant position, and thus constitutes an independent violation of the law.

71. On October 17, 2011, Mr. Tuvell again requests the reasonable accommodation of being removed from Mr. Feldman's influence, and requested an interactive dialogue to achieve that goal. Mr. Tuvell also complains about the failure of IBM to so far live up to these legal obligations. Mr. Tuvell's communication was protected conduct under c. 151B and the ADA.

72. On October 17, 2011, Mr. Tuvell asserts that his PTSD represents a disability covered by the ADA, and that his disability represents a medical condition that prevents him from continuing to work with Mr. Feldman. Mr. Tuvell again requests the reasonable accommodation of no longer having to work with Mr. Feldman, including the possibility of terminating Mr. Feldman. This communication represents a protected request for accommodation, and an internal complaint based on the ongoing failure to reasonably accommodate him.

73. On October 17, 2011, Mr. Mandel responds to Mr. Tuvell's October 17, 2011 e-mail, reaffirms a refusal to change Mr. Feldman as Mr. Tuvell's supervisor, and again suggests that Mr. Tuvell himself look for other positions within IBM, as part of an interactive process for determining reasonable accommodation.

74. On October 18, 2011, Mr. Mandel acknowledges understanding that Mr. Tuvell was requesting job modifications such that he would not have to interact with Mr. Feldman, or reassignment as a reasonable accommodations, and that IBM does not consider those to be a reasonable accommodations. IBM's past and continued refusal to reasonably accommodate Mr. Tuvell violates c. 151B and the ADA. Its position on what constitutes a reasonable accommodation plainly violates the law. E.g. 42 U.S.C. section 12111(9)(B).

75. On October 18, 2011, Mr. Tuvell again complains about IBM's lack of response to his internal complaint, again asserts his status as disabled under the ADA, and again opposes the discriminatory policy of refusing to act on his complaint while he is on STD leave. This communication is protected conduct under c. 151B and the ADA.

76. On October 19, 2011, Mr. Tuvell complains that Mr. Mandel's decision to stall resolution of Mr. Tuvell's internal complaint based on Mr. Tuvell's availment of disability leave constitutes discrimination/retaliation in violation of the ADA. This communication is protected conduct under c. 151B and the ADA.

77. On or about October 19 and 20, 2011, Mr. Tuvell objects to Mr. Feldman falsely characterizing work at home days as sick days, asks for citation to the policy that supports the practice, and notes that it is inconsistent with pre-June 30, 2011, when he worked at home. Mr. Feldman's practice constitutes a tangible adverse action, as well as continuing harassment based on retaliation, handicap, race, gender, age and/or any combination thereof.

78. On November 2, 2011, Mr. Feldman made knowingly false statement mischaracterizing Mr. Tuvell's work situation with respect to sick days — casting work-at-home days as refusal to work in the office days. This adverse treatment of work-at-home days is inconsistent with the work-at-home days that Mr. Tuvell used prior to June 30, 2011. Mr. Tuvell responded by opposing these statements and practice as continuing retaliatory harassment. Mr. Tuvell did so again on October 22, 2011. Mr. Tuvell's communications are protected conduct under c. 151B and the ADA.

79. On November 3, 2011, Mr. Tuvell filed Addendum IV to his internal complaint, complaining about handicap discrimination, retaliation, and failure to accommodate. Mr. Tuvell's communication is protected conduct under c. 151B and the ADA.

80. On or about November 9, 2011, Mr. Mandel received a letter from Mr. Tuvell's attorney, Mr. Robert Mantell, identifying Mr. Tuvell's disability and requesting reasonable accommodation. Included among the requested accommodations is a request for reassignment of Mr. Tuvell away from Mr. Feldman. This communication represents protected conduct. IBM's continued failure to come to some solution whereby Mr. Tuvell would be permitted to work in a non-harassing environment without having to interact with Mr. Feldman, constitutes a many-times repeated violation of the affirmative duty to reasonably accommodate Mr. Tuvell.

81. On November 17, 2011, Mr. Mandel spoke with Mr. Tuvell on the telephone, and explained that Mr. Tuvell's June 29, 2011 internal Complaint was rejected. The overly delayed response to Mr. Tuvell's complaint, whose "investigation" took place over more than four and a half months, was inadequate and unlawful. Mr. Mandel's rejection reflected an extremely deferential take on past events, ignored evidence, improperly favored Mr. Knabe and Mr. Feldman, and disfavored Mr. Tuvell. The response failed to address or even acknowledge Mr. Tuvell's complaints of discrimination. Mr. Mandel indicated that there were a variety of complaints that Mr. Tuvell had made, that had not been investigated and were not eligible for investigation. Some of those issues that were not investigated involved Mr. Tuvell's complaints of handicap harassment, discrimination and retaliation. Moreover, Mr. Mandel's explanation revealed a biased and incomplete investigation. To note merely one example, Mr. Mandel stated that he concluded that Mr. Tuvell raised his voice to Mr. Knabe, but that Mr. Knabe did not raise his voice to Mr. Tuvell. This ignores that fact that Mr. Knabe apologized to Mr. Tuvell in writing for Mr. Knabe's raising his voice. Moreover, the investigation affirmed the discipline of Mr. Tuvell for innocently stating in e-mail that he would provide a link for those who are "lazy." Moreover, Mr. Tuvell was criticised for communications that were protected conduct under c. 151B, and so those alleged criticisms were retaliatory per se. The unjustifiably delayed result, inadequately researched investigation, unsupportable and per se illegal conclusions demonstrate that Defendant engaged in an inadequate, sham investigation in violation of the c. 151B and ADA duties to investigate and remedy unlawful discrimination and retaliation. The defective conclusions also independently further establish a continuing hostile work environment based on retaliation, handicap, gender, race and/or age, in violation of c. 151B and the ADA. Toward the end of the November 17, 2011 conversation, Mr. Mandel said that someone would contact Mr. Tuvell about engaging in an interactive process for finding a reasonable accommodation.

82. On November 23, 2011, Mr. Feldman rejected the idea of changing Mr. Tuvell's management team, or moving him from his current position, as a reasonable accommodation. Mr. Feldman stated that Mr. Tuvell could himself use IBM's Global Opportunity Marketplace to find other positions, and that Diane Adams from Human Resources would be available to assist him in this endeavor, but there was no suggestion that Ms. Adams herself would help in actually finding other positions. This

communication, denying reassignment or a change in the management team, constitutes a violation of the obligation to reasonably accommodate Mr. Tuvell. Furthermore, the suggestion that Mr. Tuvell himself use GOM to find for himself a potential reassignment, rather than Defendant taking affirmative steps to find Mr. Tuvell a vacant position for reassignment, independently constitutes a separate violation of the duty to reasonably accommodate.

83. On November 23, 2011, Mr. Tuvell requests assistance from Ms. Adams in seeking reassignment through IBM's Global Opportunity Marketplace. Nothing of substance results from this and/or any other attempt to elicit assistance in locating a vacant position for transfer. Defendant wholly fails to offer Mr. Tuvell any reassignment which would effect a reasonable accommodation, and thus, Defendant violated its duty to reasonably accommodate Mr. Tuvell's disability.

84. On November 23, 2011, Mr. Tuvell requests a written response to his internal complaint, pursuant to Section 2.8 of the Concerns and Appeals Program. Mr. Mandel replies with a non-substantive answer, saying only that after investigation, Mr. Mandel concluded that "management treated you fairly regarding the change in your work assignment, disciplinary actions, project plan request and day-to-day interactions with you." This non-responsive response not only demonstrates pretext, and confirms the inadequacy of the investigation, but fails to provide sufficient specificity to satisfy Defendant's burden to respond to Mr. Tuvell's prima facie case.

85. On November 28, 2011, after searching for alternative positions on IBM's Global Opportunity Marketplace, Mr. Tuvell applies for an internal posting SWG-0436579.

86. While on STD leave, Mr. Tuvell has an obligation to "check-in" with his employer on a weekly basis. Mr. Tuvell complies with this requirement. On November 28, 2011, Mr. Feldman falsely accuses Mr. Tuvell of not checking-in during the week. This constitutes additional harassment on the basis of retaliation, handicap, age, race and/or gender.

87. On November 28, 2011, Mr. Tuvell informs Mr. Feldman that he had checked-in, as required, and that he is medically incapable of returning to work under Mr. Feldman. Mr. Tuvell once again requests reassignment as a reasonable accommodation. This communication constitutes a protected communication and request for reasonable accommodation under c. 151B and the ADA. Mr. Feldman later acknowledges that he had indeed received Mr. Tuvell's prior, timely check-in, and that Mr. Tuvell was not deficient in checking-in.

88. Mr. Chris Kime was the manager tasked with filling the SWG-0436579 posting. On November 30, 2011, Mr. Kime informs Mr. Tuvell that Mr. Tuvell's resume demonstrates his qualification for the position, and Mr. Kime schedules a meeting to discuss the position.

89. On December 1, 2011, Mr. Tuvell informs Mr. Kime that Mr. Tuvell is returning from a STD leave, but that Mr. Tuvell is healthy to work. Mr. Tuvell, in this communication, alerts Mr. Kime of his disability status, as well as his availment of disability leave as a reasonable accommodation. Despite understanding Mr. Tuvell's status on disability leave, Mr. Kime continues to express interest in Mr. Tuvell for the open posting.

90. On December 5, 2011, Mr. Tuvell informs Mr. Feldman of his upcoming interview for the transfer, and asks for physical access to IBM facilities, as his access had previously been cut off. In addition, Mr. Tuvell asks Mr. Feldman to let Mr. Tuvell know of any other job opportunities that are available for which Mr. Tuvell is qualified. This communication constitutes a request for reasonable accommodation. On December 6, 2011, Mr. Feldman ostensibly provides permission for Mr. Tuvell to attend the job interview.

91. On December 6, 2011, Robert Mantell, attorney for Mr. Tuvell, e-mails Mr. Larry Bliss, Esq., attorney for IBM, to confirm that Mr. Tuvell's utilization of STD is utilized as a reasonable accommodation, and that barring Mr. Tuvell from facilities and denying him access based on his use of STD leave is a violation of the handicap discrimination laws, and will prevent him from attending an interview. This communication is protected conduct under c. 151B and the ADA.

92. On December 6, 2011, Mr. Bliss e-mails Mr. Mantell, falsely asserting that Mr. Tuvell's badge access was never turned off.

93. On December 8, 2011, Mr. Tuvell has an interview for the SWG-0436579 posting at IBM's Littleton facility, which went very positively. On this day, Mr. Tuvell's badge does not work, and he needs assistance to enter the building. Mr. Tuvell further undertakes significant efforts to get the badge activated, finally succeeding. The continued act of barring Mr. Tuvell from unrestricted access to IBM facilities pending his status on disability leave represents a continued violation of c. 151B and the ADA, as a tangible job action, as well as harassment.

94. On December 12, 2011, Mr. Kime e-mails Tuvell, stating that the job interview was "very positive, and I will be following up with my management chain, and will keep you posted of developments as they occur." On various occasions, Mr. Tuvell enthusiastically follows up on his application for reassignment. On December 16, 2011, Mr. Tuvell informs Mr. Kime and others considering his application for transfer that he had just been awarded a patent.

95. On December 16, 2011, Mr. Feldman writes to Mr. Tuvell, continuing to deny Mr. Tuvell the ability to have VPN computer access while he is on disability leave. Mr. Feldman states, "As for your email about systems access, since you continue to be on STD and therefore are not working[,] there is not a business need for you to have access to Netezza-specific systems." Furthermore, Mr. Feldman rejects Mr. Tuvell's request to end his STD leave prior to the end of the year, and to use his vacation days until the end

of the year. This conduct constitutes both tangible adverse actions, and/or continuing harassment based on retaliation, handicap, race, age and/or gender.

96. On or about December 19, 2011, Ms. Stephanie Ross, LICSW, Mr. Tuvell's psychotherapist, submits a Medical Treatment Report concerning Mr. Tuvell to IBM. The report states that Mr. Tuvell "continues to experience extreme triggering regarding workplace previously assigned," and that the "only modification that would be possible is a change of supervisor and setting." The report further states, "unable to return to previous setting w[ith] current supervisor and setting - PTSD symptoms exacerbate immediately." On the basis of this report, IBM extends Mr. Tuvell's disability leave. The report once again places IBM on clear notice that it was required to reassign Mr. Tuvell to a vacant position in order to comply with its duty to reasonably accommodate Mr. Tuvell.

97. On January 6, 2012, Mr. Kime noted Mr. Tuvell's "deep technical skills and ability to produce solid documentation." Mr. Kime also noted and apologized for his "earlier optimism" that Mr. Tuvell would be selected. However, Mr. Kime, at that time, rejected Mr. Tuvell's application for job posting SWG-0436579. Mr. Kime asserted that after consultation with his "up-line management," that "[w]e cannot move forward with taking you directly from being on short term disability." This rejection, based directly on Mr. Tuvell's availment of disability leave as a reasonable accommodation, constitutes discrimination based on handicap, and is retaliation per se. Furthermore, the rejection is a separate and independent violation of Defendant's affirmative obligation to provide reassignment to a vacant position as a reasonable accommodation.

98. In the January 6, 2012 e-mail, Mr. Kime gave a secondary justification for rejection, suggesting that Mr. Tuvell might not be satisfied with the work available in the position. However, that alleged "concern" is pretextual, as Mr. Tuvell gave every indication that he would be satisfied with the work responsibilities of that position. For example, on December 9, 2011, Mr. Tuvell had written to Mr. Kime, "You gave me quite a good picture of what you're doing, and it feels very much like what I'd like/want to be doing." The second, pretextual reason given for rejection demonstrates that the true motive for the rejection was unlawful discrimination and/or retaliation, in violation of c. 151B and/or the ADA.

99. On January 10, 2012, Mr. Mantell e-mails Mr. Bliss, asserting that the rejection of Mr. Tuvell's application for reassignment constituted a retaliatory job action under the handicap discrimination laws, and that direct evidence proves the violation. This communication is protected under c. 151B and the ADA.

100. On January 11, 2012, Mr. Tuvell e-mails Mr. Feldman, complaining that his use of disability leave as a reasonable accommodation has been used to justify his rejection for reassignment, and that this action constitutes unlawful retaliation in violation of handicap discrimination law. Mr. Tuvell notes that the action appeared to foreclose the avenue that Mr. Feldman himself suggested on November 23, 2011 for seeking reassignment, and Mr. Tuvell requests other ideas for obtaining reasonable

accommodation. This communication constitutes protected opposition under c. 151B and the ADA, and likewise constitutes a request for reasonable accommodation.

101. On January 16, 2012, Mr. Feldman e-mails Mr. Tuvell, and provides Mr. Tuvell with a third, different reason for rejecting his application for reassignment. Mr. Feldman states that Mr. Tuvell was rejected because the "team" did not think that Mr. Tuvell was the "right fit for the position." This intentionally vague and pretextual reason given for rejection demonstrates that the true motive for the rejection was unlawful discrimination and/or retaliation, in violation of c. 151B and/or the ADA. Mr. Feldman again rejected the idea of changing managers as a reasonable accommodation, and again asserted that Mr. Tuvell could himself look for other positions on GOM. The repeated suggestion that Mr. Tuvell use GOM to find for himself a potential reassignment, rather than IBM taking affirmative steps to find Mr. Tuvell a vacant position for reassignment, independently constitutes a separate violation of the duty to reasonably accommodate. Furthermore, Mr. Feldman's proffer of a false explanation for the rejection constitutes continued harassment.

102. This paragraph purposefully left blank.

103. On January 18, 2012, Mr. Tuvell notes that Mr. Feldman's assertion that Mr. Tuvell was not the "right fit" for the transfer is false and pretextual. Mr. Tuvell notes that the rejection was expressly, and unambiguously based on Mr. Tuvell's availment of STD leave, and notes that his availment of disability leave was the reason behind other adverse actions taken against him, such as loss of system and building access, and delay in acting on Mr. Tuvell's internal complaint. Mr. Tuvell's communication is protected conduct under c. 151B and the ADA.

104. On January 19, 2012, Mr. Tuvell utilizes Ms. Adams' assistance to review job opportunities on GOM. Again, Defendant fails to offer Mr. Tuvell any reassignment, in violation of its obligation to reasonably accommodate Mr. Tuvell's disability.

105. On January 20, 2012, Mr. Feldman e-mails Mr. Tuvell, offering alleged, but clearly inadequate accommodations such as having a different person providing performance feedback, leave to go to doctor's appointments, and the opportunity to continue using GOM. Mr. Feldman's suggested accommodations are contrary to Mr. Tuvell's medical certifications, and Mr. Tuvell's repeated assertions that he needs to report to a different person as part of a reasonable accommodation.

106. On January 20, 2012, Tuvell e-mails Mr. Feldman, asserting that the accommodations Mr. Feldman proposed are insufficient, and notes that Mr. Feldman knew they were insufficient when they were proposed. Mr. Tuvell further notes that his continued mere access to the GOM process is insufficient as opposed to IBM's obligation to actively provide reasonable accommodation, and that Defendant's continued refusal to provide him with reasonable accommodation has forced him to apply for Long Term Disability (LTD). This communication is protected opposition to unlawful conduct, and a protected request for reasonable accommodation.

107. On January 20, 2012 and/or January 22, 2012, Mr. Tuvell files a second Open Door Complaint, relating to denial of transfer, and refusal to find him a new position as a reasonable accommodation. This communication is protected conduct under c. 151B and the ADA, and represents a continuing request for reasonable accommodation.

108. On January 23, 2012, Mr. Mantell e-mails Mr. Bliss, requesting that Mr. Tuvell be transferred to the open job posting SWG-0456125, which is the reposted version of SWG-0436579, noting that IBM is legally obligated, under its duty of reasonable accommodation, to do more than simply allow Mr. Tuvell to use GOM, and placing Defendant on notice that Mr. Tuvell is entitled to the requested reassignment under the ADA, citing to EEOC Guidance and cases. This communication constitutes protected opposition, as well as a protected request for reasonable accommodation.

109. On January 24, 2012, Mr. Bliss replies to Mr. Mantell, rejecting the request for reassignment. Mr. Bliss supports Defendant's failure to accord the reassignment as a reasonable accommodation by asserting, falsely, and contrary to Mr. Tuvell's medical documentation, that he was capable of performing his job in his current position under Mr. Feldman. The denial of the reassignment constitutes a violation of the duty to reasonably accommodate under c. 151B and the ADA. Furthermore, Mr. Bliss reasserts proposed accommodations that preserve work conditions that Mr. Tuvell and his health care provider have certified to be inconsistent with a return to work. The continued assertion of proposed accommodations that violate the terms of Mr. Tuvell's medical documentation and medical limitations, constitute a continued refusal to engage in a genuine interactive dialogue.

110. On or about January 25, 2012, Mr. Tuvell exhausts his STD benefits, and is transitioned to unpaid leave.

111. On January 25, 2012, Mr. Tuvell applies for job posting SWG-0456125, which is the reposted version of SWG-0436579. At this point, Mr. Tuvell is no longer on STD leave, thereby avoiding the reason that Mr. Kime initially used to reject him for the position.

112. On January 27, 2012, Mr. Mantell replies to Mr. Bliss' e-mail of January 24, 2012, stating that Mr. Tuvell is medically incapable of performing in his present position under his current supervisor, and that Mr. Tuvell and his health care provider have certified his medical incapacity. Mr. Mantell states that by according STD leave, IBM has explicitly recognized Mr. Tuvell's medical incapacity, which fact is inconsistent with Mr. Bliss' assertion to the contrary. Mr. Mantell also placed Mr. Bliss on notice that provision of a new supervisor may be a reasonable accommodation, but that in the absence of a new supervisor, Mr. Tuvell is seeking the only accommodation available, reassignment to a vacant position. Finally, Mr. Mantell placed Mr. Bliss on notice that the accommodations proposed by Defendant is inconsistent with Mr. Tuvell's medical limitations and medical certifications. This communication constituted protected conduct under c. 151B and the ADA.

113. On or about February 7, 2012, Mr. Tuvell applies for LTD benefits. Mr. Tuvell's application makes it clear that he is able to work if provided appropriate, non-harassing work conditions, within the limits of his medical certifications.

114. On February 8, 2012, Mr. Tuvell e-mails Mr. Feldman and Mr. Mandel, informing them of his LTD application, and attaching Stephanie Ross' addendum to the LTD certification. The Ross addendum confirms Mr. Tuvell's diagnosis of PTSD, and requests a reasonable accommodation of reassignment. Mr. Tuvell specifically requests prompt investigation and resolution of his January 2012 complaint, and prompt reassignment to SWG-0456125 as a reasonable accommodation. Mr. Tuvell places Defendant on notice of its legal obligation to accord him with reasonable accommodation, and the communication is protected conduct under c. 151B and the ADA.

115. On February 13, 2012, Mr. Mandel rejects Mr. Tuvell's January 2012 second Open Door Complaint based on the rejected reassignment, purportedly because of the "performance issues we discussed previously would present a problem to your success in the role to be filled." This fourth reason given for rejection is pretextual, which demonstrates that the true motive for the rejection was unlawful discrimination and/or retaliation, in violation of c. 151B and/or the ADA. This reason simply recalls the vague, false criticisms that Mr. Mandel asserted in the November 17, 2011 conversation, which were themselves knowingly pretextual, and were retaliatory per se in that the alleged criticisms were based on protected conduct.

116. On February 14, 2012, Mr. Tuvell requested a more substantive description of the alleged "performance issues" that formed the basis Mr. Mandel's fourth reason for rejection.

117. On February 15, 2012, Mr. John Metzger, manager over Mr. Knabe and Mr. Feldman, writes to Mr. Tuvell, holding open the option of having Mr. Tuvell return to his operational position under Mr. Feldman, though with Mr. Metzger in charge of formal performance evaluations. Apparently, Mr. Mandel's alleged performance issues preventing Mr. Tuvell's reassignment do not prevent Mr. Tuvell's return to his current job, thus further demonstrating that the fourth reason given for the rejection is pretextual. IBM's continued faux proposals of accommodations that are inconsistent with Mr. Tuvell's medical limitations and medical documentations represents both a failure to reasonable accommodate, and failure to engage in a bona fide interactive process.

118. On February 16, 2012, Mr. Tuvell replies to Mr. Metzger, asserting that Mr. Tuvell is medically incapable of returning to work under Mr. Feldman, and supports that position by attaching Ms. Ross' Addendum. This communication is protected as yet another request for reasonable accommodation.

119. On February 17, 2012, Mr. Mandel asserts a fifth and sixth reason for the rejection -- Mr. Tuvell's purported "inability to work cohesively with other members,"

and the “unprofessional conduct for which he was cited on July 5, 2011.” This fifth and sixth pretextual reason given for rejection demonstrates that the true motive for the rejection was unlawful discrimination and/or retaliation, in violation of c. 151B and/or the ADA.

120. On February 28, 2012, Mr. Mandel refuses to respond substantively to Mr. Tuvell’s request for a specific description of the reasons for his rejection of his application for reassignment. Mr. Mandel states that Mr. Tuvell’s January 22, 2012 complaint had been rejected as of February 17, 2012. Mr. Mandel alleges that the interactive process is still open, but that Mr. Tuvell had rejected the proposed accommodations “because they did not satisfy your particular demands.” Yet Mr. Mandel continues to refuse to propose any accommodation that is consistent with Mr. Tuvell’s medical limitations and supporting medical documentation.

121. On February 28, 2012, Mr. Tuvell responds to Mr. Mandel’s February 28 communication, again requesting specific reasons for his rejection for reassignment, and noting that Mr. Tuvell’s requests for reasonable accommodations is supported by medical documentation, and not simply by his “demands.”

122. On March 2, 2012, Tuvell files his third internal Open Door complaint of discrimination and retaliation with Mandel. This complaint constitutes protected conduct under G.L. c. 151B, § 4(4).

123. On March 6, 2012, Mr. Mandel accuses Mr. Tuvell of misusing IBM’s “systems” by e-mailing his complaints of discrimination and retaliation to members of his team. Mr. Tuvell’s e-mails constitute explicit opposition to IBM’s unlawful conduct, seeking help for himself and warning others of the conduct. Based on Mr. Mandel’s assertion of “abuse”, IBM removes Mr. Tuvell’s access to Lotus Notes. This false assertion of abuse and misuse of the systems constitutes harassment, and the rescission of access to Lotus Notes constitutes both a tangible job action and/or harassment based on retaliation. Direct evidence demonstrates that the unlawful conduct was directly based on Mr. Tuvell’s protected opposition.

124. On March 6, 2012, Mr. Tuvell writes to Mr. Mandel and objects to the withdrawal of access to Lotus Notes, complains that the recent action is retaliation, and denies that he had abused or misused IBM systems. Mr. Tuvell further asserts his willingness/efforts to engage in an interactive dialogue with respect to accommodating his disability. This communication constitutes protected activity.

125. On March 6, 2012, Mr. Tuvell discovers that he was not merely barred from Lotus Notes, but that his access to the whole of “w3” (IBM’s internal corporate network) is rescinded. Rescinding Lotus Notes involves restricting only e-mail, although e-mail access is still available by alternate means. Rescinding w3 access means that Mr. Tuvell has no access whatsoever to corporate documents, such as the employee handbook, no access to the employee database, and he can no longer access GOM, which impairs his ability to find new career opportunities within IBM. The restriction constitutes an

adverse action, and/or continuing harassment, and an abandonment of any effort to find Mr. Tuvell a reasonable accommodation.

126. On March 6, 2012, Mr. Tuvell e-mails Mr. Mandel, objecting to the withdrawal of access from w3 as retaliation, and objecting to Mr. Mandel's misleading communication of March 6, 2010, which indicated that only Lotus Notes was affected. This is protected communication.

127. On or about March 8, 2012, Mr. Tuvell discovers that his badge access to IBM facilities was rescinded, again.

128. On March 6, 2012, Mr. Tuvell e-mails Mr. Mandel, objecting to the withdrawal of access from w3 as retaliation, and objecting to Mandel's misleading communication of March 6, 2012, which indicated that only Lotus Notes was affected.

129. On March 9, 2012, Mr. Tuvell e-mails Addendum II of his new Complaint to Mr. Mandel, and to other recipients within IBM, which contains further complaints of discrimination and retaliation. This was a protected communication under G.L. c. 151B, § 4(4).

130. On March 12, 2012, Mr. Tuvell files his first charge of discrimination with the Massachusetts Commission Against Discrimination (MCAD). This is protected conduct under G.L. c. 151B, § 4(4).

131. On March 13, 2012, Mr. Mandel e-mails Mr. Tuvell, saying that Mr. Tuvell has been disruptive for e-mailing his Addendum II to certain other recipients, and if he continues to do so, he will be terminated. Mr. Mandel asserts that Mr. Tuvell's access to IBM systems was terminated due to his disruptive conduct. In actuality, Mr. Tuvell's circulation of Addendum II is protected conduct, and Mr. Mandel's response demonstrates retaliatory hostility towards such conduct.

132. On April 25, 2012, Ms. Adams informs Mr. Tuvell that given MetLife's denial of his request for LTD benefits, that IBM would keep him on an unpaid leave of absence while the appeal of the LTD denial is pending. Mr. Tuvell responds by confirming that he will appeal the LTD denial, requesting an update on the response to his complaint of March 2, 2012, and reasserting his longstanding request for reasonable accommodation via transfer or reassignment.

133. On May 3, 2012, Ms. Joan Ackerstein, Esq., lawyer for Defendant, writes to demand that Tuvell deny any working affiliation with EMC, and threatening to assume such affiliation in the absence of a denial. Mr. Mantell, attorney for Plaintiff, writes in response that Tuvell has done nothing that would lead IBM to conclude that Tuvell works for EMC.

134. On May 7, 2012, Ms. Adams writes to Mr. Tuvell, stating that IBM believes he is working for EMC in violation of IBM's Business Conduct Guidelines, and threatening termination unless he confirms that he is not working for EMC.

135. On May 8, 2012, Mr. Tuvell responds to Ms. Adams, objecting to the inference that he is violating IBM Guidelines, and inviting IBM to produce evidence of conflicting employment. Mr. Tuvell objects to IBM's accusations as defamatory and motivated by retaliation. Mr. Tuvell requests that his response be considered as his Fourth Open Door internal complaint alleging unlawful discrimination and retaliation.

136. On May 8, 2012, Ms. Adams responds to Mr. Tuvell's request, asserting that Tuvell's LinkedIn page indicates that he is currently working for EMC.

137. On May 8, 2012 Mr. Tuvell writes to Ms. Adams, asserting that he is not working for EMC, and stating that the LinkedIn page had been unintentionally or intentionally altered to include misstatements, by LinkedIn or some other party, and that he has not edited his LinkedIn page since 2009. Mr. Tuvell had once worked for EMC in previous years, as IBM knew. Mr. Tuvell complains that the continued harping on this subject constitutes further harassment.

138. Even after Mr. Tuvell affirms that he is not working for EMC, IBM generated a new set of inquiries, and on May 9, 2012, Ms. Adams informs Tuvell to identify where he is working during his unpaid, extended leave of absence with IBM.

139. On May 10, 2012, Mr. Tuvell informs Ms. Adams that he has been complying with his contractual obligations, but that he will not tell IBM where he is working, out of fear that IBM's retaliatory strategies will interfere with his gainful employment, just as it interfered with his attempts at internal transfer.

140. On May 11, 2012, Ms. Adams writes to Tuvell, asserting that IBM's Personal Leave of Absence Policy requires Mr. Tuvell to tell IBM if he is working while on leave, and that Mr. Tuvell is in violation of that policy. However, that policy is plainly inapplicable, as Mr. Tuvell is plainly not on Personal Leave.

141. On May 14, 2012, Mr. Tuvell responds to Ms. Adams, stating that [1] he is not on a Personal Leave of Absence, and the accusation that he is violating the Personal Leave of Absence policy is retaliatory; [2] that this hostile conduct should be added to Tuvell's pending Fourth Open Door internal complaint of discrimination and retaliation; [3] reiterating that Mr. Tuvell is not working for EMC, and consenting to an inquiry to EMC to confirm this fact; [4] confirming that Mr. Tuvell is not in a conflict of interest, and offering to respond to questions about his employment to satisfy IBM's concerns about a conflict. Mr. Tuvell notes that he will not reveal the employer's identity, as that will provide a way for IBM to sabotage him, that there is no policy requiring him to reveal the identity of his employer, and that he is willing to work through a trusted third party to ease any lingering concerns on the part of IBM. Mr. Tuvell also complains that the continued inquiries constitute harassment.

142. On May 15, 2012, Ms. Adams instructs Mr. Tuvell to identify the company that he is now working for by 5:00 pm the next day.

143. On May 16, 2012, Mr. Tuvell responds to Ms. Adams, stating that there is no obligation that he reveal his other employer, that IBM has forced him to accept concurrent employment for financial reasons by its refusal to pay him and failure to engage in the interactive process, and that IBM's conduct has made him feel that it is not safe to reveal information about the other employer. Mr. Tuvell complains that the repeated demands for information constitute continuing harassment and retaliation. Mr. Tuvell reasserts his request that IBM resolve his two pending Open Door complaints (Third and Fourth), and for the reasonable accommodation of transfer, and states that if IBM responds acceptably, that he will reveal the identity of the other employer.

144. On May 17, 2012, at 7:33 am, Mr. Tuvell forwards to Mandel the May 16, 2012 e-mail, and asks that it be added to Mr. Tuvell's Fourth Open Door C&A internal complaint. The May 16 and 17, 2012 e-mails constitute protected conduct under G.L. c. 151B.

145. On May 17, 2012, at 4:59 pm, Mr. Feldman writes to Mr. Tuvell, stating that Mr. Tuvell is fired, effective immediately. As reasons for the termination, Feldman stated that Tuvell had not explained why his LinkedIn page indicated that he had been consulting for EMC for the past five years, and that he was unwilling to inform IBM where Tuvell was currently working. In fact, Mr. Tuvell had explained that his LinkedIn page had been altered by LinkedIn and/or someone else, and he had explained that he did not feel safe informing IBM of his current employment due to IBM's harassing conduct.

146. In his May 17, 2012 e-mail, Mr. Feldman instructs Mr. Tuvell not to delete information from his laptop, supply all passwords to the laptop, and to make it available for pick-up by a courier. These demands about the data deletion and passwords are not usual practice, and represent retaliation or retaliatory harassment. (However, Mr. Tuvell had already sanitized his laptop the preceding Saturday, May 12, pursuant to standard usual and customary practice at Netezza/IBM.)

147. On May 22, 2012, Mr. Stephen Frazier, a consultant from the computer forensics company, AccessData, picks up the computer and two power supplies from Mr. Tuvell. On information and belief, the review of employees', or former employees' computers for forensic investigation is contrary to IBM's usual practice or policy, and constitutes a retaliatory investigation and/or retaliatory harassment.

COUNT I – FAILURE TO ENGAGE IN INTERACTIVE PROCESS – ADA AND
CHAPTER 151B, §§ 4(16), 4(4A)

148. Plaintiff incorporates by reference all of the preceding allegations.

149. Plaintiff repeatedly asserted himself to be a qualified handicapped individual in need of reasonable accommodation, repeatedly asserted a medical inability to continue working in his present position under Mr. Feldman, and repeatedly submitted medical documentation in support of workplace conditions that would allow him to work despite those medical limitations.

150. Despite the provision of this information, Defendant failed to provide or to propose reasonable accommodations that were consistent with the medical limitations, of which it was aware.

151. When Plaintiff repeatedly made the point that the accommodations suggested by Defendant were inconsistent with his medical limitations, Defendant refused to respond with any substance. Moreover, Defendant never questioned or disputed Mr. Tuvell's self-described medical limitations, or Mr. Tuvell's supporting medical documentation in any substantive fashion, and never requested any further information concerning Mr. Tuvell's medical condition, or ability to work within various accommodations.

152. Consequently, Defendant failed to engage in the interactive process.

153. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT II -- FAILURE TO REASONABLY ACCOMMODATE PLAINTIFF -- ADA
AND CHAPTER 151B, §§ 4(16), 4(4A)

154. Plaintiff incorporates by reference all of the preceding allegations.

155. Plaintiff is an otherwise qualified handicapped individual who requires reasonable accommodation to perform his job.

156. On occasions described above and on other occasions, Plaintiff asserted himself to be a qualified handicapped individual in need of reasonable accommodation, repeatedly asserted a medical inability to continue working in his present position under Mr. Feldman, and repeatedly submitted medical documentation in support of workplace conditions that would allow him to work despite those medical limitations.

157. IBM's own written policies acknowledge the option of removing a supervisor from a situation when a supervisor has engaged in misconduct.

158. Defendant engaged in a continued practice of refusing to accord Plaintiff with reasonable accommodations, such as reassignment to a vacant position, or assignment to a different supervisor, or other accommodation whereby Mr. Tuvell would be separated from Mr. Feldman.

159. All alleged accommodations suggested by Defendant required Mr. Tuvell to continue under the day-to-day supervision of Mr. Feldman, which was contrary to medical limitations and medical documentation known to Defendant.

160. Defendant failed to engage in a bona fide interactive process, and refused to directly confront and address the medical limitations and documentation that they were provided. Defendant restricted Mr. Tuvell from access to its internal listings of career opportunities, and misleadingly suggested that he apply for jobs for which it had no intention of hiring him.

161. Instead of providing requested and required reasonable accommodation, Defendant forced Plaintiff to go out on short term disability leave, and then on unpaid leave, causing economic damages and harm to Plaintiff's professional career, and preventing him an equal opportunity to participate in the workplace, as well as physical and emotional pain and suffering.

162. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT III – FAILURE TO ASSIST IN HELPING MR. TUVELL OBTAIN THE
REASONABLE ACCOMMODATION OF REASSIGNMENT TO A VACANT
POSITION FOR WHICH HE IS QUALIFIED – ADA AND CHAPTER 151B, §§ 4(16),
4(4A)

163. Plaintiff incorporates by reference all of the preceding allegations.

164. While Defendant held out the potentiality of reassignment to a vacant position as a possible reasonable accommodation, Defendant made no effort beyond merely permitting Mr. Tuvell to apply for positions through the Global Opportunity Management (GOM) process, which was open and available to all IBM employees.

165. Merely making the GOM process available to Mr. Tuvell, and allowing him to apply for jobs on the same level playing field as any other IBM employee, was insufficient to satisfy Defendant's duty to affirmatively discover and offer Mr. Tuvell reassignment to a vacant position for which he qualified. Defendant should have affirmatively searched its inventory of open positions for which Mr. Tuvell qualified, and offered Mr. Tuvell such positions. Defendant wholly failed in its obligation to do so.

166. Defendant violated 42 U.S.C. section 12111(9)(B) in requiring Mr. Tuvell to undertake the GOM process to seek reassignment, and by refusing to take steps to locate open positions for which Mr. Tuvell qualified, and failing to offer Mr. Tuvell such positions.

167. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT IV – FAILURE TO REASSIGN PLAINTIFF TO OPEN JOB POSTINGS
SWG-0456125 AND SWG-0436579 – ADA AND CHAPTER 151B, §§ 4(16), 4(4A)

168. Plaintiff incorporates by reference all of the preceding allegations.

169. Given the information available to Defendant, and given Defendant's refusal to accord the reasonable accommodation of having Mr. Tuvell separated from Mr. Feldman while continuing to work in Mr. Tuvell's current position, Defendant was obligated to provide the reasonable accommodation of reassigning Mr. Tuvell to a vacant position. Reassignment was the only viable alternative reassignment that preserved Mr. Tuvell's equality and career opportunities in the workplace.

170. Using the GOM process, Mr. Tuvell found positions for which he qualified, in open requisitions SWG-0456125 and SWG-0436579 (which are apparently both for the same position). Mr. Tuvell interviewed for the first posting, the interview was positive and Mr. Tuvell was deemed qualified by those charged with filling the position. IBM failed to provide Mr. Tuvell the reassignment to which he was entitled.

171. The position(s) remain unfilled, and so it is not the case that Mr. Tuvell was rejected in favor of a superior candidate.

172. Defendant violated 42 U.S.C. section 12111(9)(B) in refusing to provide these reassignments to vacant positions for which Mr. Tuvell is qualified.

173. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT V – FAILURE TO REASSIGN PLAINTIFF TO OPEN JOB POSTINGS SWG-
0456125 AND SWG-0436579 ON THE BASIS OF HANDICAP DISCRIMINATION,
RETALIATION FOR AVAILING HIMSELF OF THE REASONABLE
ACCOMMODATION OF MEDICAL LEAVE, RETALIATION FOR ENGAGING IN
OTHER PROTECTED CONDUCT, RACE, GENDER, AGE AND/OR ANY
COMBINATION THEREOF – ADA AND CHAPTER 151B, §§ 4(16), 4(4A)

174. Plaintiff incorporates by reference all of the preceding allegations.

175. Mr. Tuvell applied for, and was qualified for open job posting SWG-0456125.

176. On January 6, 2012, Mr. Tuvell was rejected for the position, on the grounds that "I underestimated the difficulty of moving forward with bringing you to the team. We cannot move forward with taking you directly from being on short term disability – this

will receive very close scrutiny from the operations people in our organization.” See Exhibit 1. This rejection, based expressly on Mr. Tuvell’s availment of disability leave as a reasonable accommodation, constitutes overt discrimination based on handicap and is retaliation per se.

177. Defendant had additionally, on other occasions, subjected Mr. Tuvell to disadvantage based on his availment of disability leave, including without limitations disabling Mr. Tuvell’s access to IBM facilities, limiting his computer access, and refusing to progress and finalize review of Mr. Tuvell’s internal complaint, all explicitly because Mr. Tuvell was on disability leave. Furthermore, Defendant had penalized Mr. Tuvell for working at home due to his disability, by requiring to use up sick leave on those days.

178. On January 6, 2012 and subsequent occasions, Defendant provided a variety of shifting, false, and pretextual reasons for the rejection, demonstrating that the true reason(s) for rejection are discrimination and/or retaliation.

179. Mr. Tuvell was rejected for SWG-0456125 on the basis of retaliation for availing himself of the reasonable accommodation of disability leave, retaliation for taking other actions protected by the ADA and c. 151B, handicap, race, gender, age and/or any combination thereof.

180. Later, Mr. Tuvell applied for posting SWG-0436579, which apparently is the same job position. On February 28, 2012, Mr. Mandel informed Mr. Tuvell that he had been rejected for this posting for the same reasons that he had been rejected for SWG-0456125.

181. Mr. Tuvell was rejected for SWG-0436579 on the basis of retaliation for availing himself of the reasonable accommodation of disability leave, retaliation for taking other actions protected by the ADA and c. 151B, handicap, race, gender, age and/or any combination thereof.

182. As a result of Defendant’s misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT VI – TANGIBLE JOB ACTIONS ON ACCOUNT OF HANDICAP,
RETALIATION, GENDER, RACE, AGE AND/OR ANY COMBINATION THEREOF
– ADA AND CHAPTER 151B, §§ 4(16), 4(4A)

183. Plaintiff incorporates by reference all of the preceding allegations.

184. In addition to the acts described in the above counts, Defendant engaged in various other tangible job actions in violation of c. 151B and the ADA.

185. Defendant demoted Mr. Tuvell within the Performance Architecture Group because of his handicap, race, gender, age and/or any combination thereof.

186. Mr. Feldman instructed Mr. Tuvell not to communicate with Mr. Feldman outside the presence of Human Resource representatives, because of his handicap, retaliation, race, gender, age and/or any combination thereof.

187. Defendant [1] issued Mr. Tuvell a Formal Warning Letter; [2] forced Mr. Tuvell out on a disability leave instead of accommodating him or preventing continued mistreatment (resulting in reduced compensation, and later, cessation of compensation); [3] curtailed Mr. Tuvell's computer access; [4] curtailed Mr. Tuvell's access from IBM facilities; [5] refused to finalize the investigation of Mr. Tuvell's internal complaint; [6] treated work-at-home days as sick days; [7] delayed investigating Mr. Tuvell's complaints; [8] refused to permit Mr. Tuvell to cut short his disability leave in order to avail himself of vacation benefits; [9] curtailed Mr. Tuvell's access to Lotus Notes (his ability to communicate by e-mail to IBM co-workers); [10] curtailed Mr. Tuvell's VPN access to IBM's internal w3 network (cutting off his ability to search IBM's internal listings, locate IBM peers, and review IBM internal documents and policies); [11] threatened Mr. Tuvell with termination for forwarding protected complaints to others within IBM; [12] repeatedly demanded that Mr. Tuvell reveal where he was working during the forced unpaid leave, despite the absence of a policy or contract clause requiring him to reveal such information; [13] threatened Mr. Tuvell with termination for failing to confirm whether he was employed at EMC; [14] threatened Mr. Tuvell with termination for failing to tell IBM where he was working; [15] falsely accused Tuvell of violating the Personal Leave of Absence policy; and [16] fired Tuvell.

188. Each of these actions, either singly or in combination, constitute tangible job actions that were undertaken based on handicap, retaliation, race, gender, age and/or any combination thereof, in violation of c. 151B and the ADA.

189. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT VII – HARASSMENT ON THE BASIS OF HANDICAP, RETALIATION,
RACE, GENDER, AGE AND/OR ANY COMBINATION THEREOF – CHAPTER
151B, §§ 4(1), 4(4), 4(4A), 4(16) AND THE ADA

190. Plaintiff incorporates by reference all of the preceding allegations.

191. The prior Count lists tangible actions, each of which in isolation supports liability. However, even if those acts are not considered tangible job actions, and even if they are, they helped to form a hostile work environment, and/or, in combination, constitute one or more actionable adverse actions.

192. The harassing conduct is too voluminous to identify in its entirety in the Complaint, but much of it is described above. Defendant created a hostile work environment by victimizing Plaintiff through a series of tangible and/or non-tangible harassing acts, because of his handicap, retaliation for engaging in protected conduct, race, gender, age and/or any combination thereof.

193. Defendant failed in its ADA, c. 151B and contractual obligations to investigate and remediate and unlawful work environment brought to their attention.

194. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT VIII – FAILURE TO INVESTIGATE AND REMEDIATE HARASSMENT
ON THE BASIS OF HANDICAP, RETALIATION, RACE, GENDER, AGE AND/OR
ANY COMBINATION THEREOF – CHAPTER 151B, §§ 4(1), 4(4), 4(4A), 4(16) AND
THE ADA

195. Plaintiff incorporates by reference all of the preceding allegations.

196. Once Mr. Tuvell brought unlawful harassment and/or tangible job actions resulting in a hostile work environment to the attention of IBM and its agents, Defendant had the obligation to fully and fairly investigate and remediate the situation.

197. Sometimes, Defendant failed to even acknowledge Mr. Tuvell's complaints of discrimination and/or retaliation, which reflects Defendant's contempt for the complaint process and its obligation to comply with the discrimination laws, and reflects a practice that would dissuade a reasonable person from complaining.

198. Defendant continued its campaign of refusing to progress and/or resolve Plaintiff's pending internal complaints of harassment, and failed to adequately remedy the conduct, and permitted it to continue unabated. In the instances in which it did act, Defendant instead conducted biased, inadequate and deferential sham investigations and failed to cure or remediate the misconduct brought to their attention.

199. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

WHEREFORE, Plaintiff requests:

- a. that the Defendant compensate Plaintiff for any loss of wages and/or benefits, including back pay and front pay;
- b. that the Plaintiff be awarded an amount of money which will fairly compensate his emotional and physical pain and suffering;
- c. that the Plaintiff be compensated for loss of reputation and loss of career opportunities, caused by Defendant's conduct.
- d. that the Plaintiff be awarded attorney's fees and costs.
- e. that the Plaintiff be awarded punitive and/or multiplied damages.
- f. that the Defendant pay the Plaintiff pre- and post-judgment interest;
- g. that the Plaintiff be reinstated to his position, or to a different position at IBM for which he qualifies, under conditions that are consistent with his medical limitations, and otherwise be made whole;
- h. equitable relief to prevent future misconduct;
- i. that Plaintiff's personnel file should be expunged of improper, harassing criticisms of his work performance;
- j. any other relief as may be just and proper and/or which will make the Plaintiff whole.

Respectfully submitted,

The Plaintiff,
By his Attorneys

/s/ Robert S. Mantell

Robert S. Mantell
BBO# 559715
Rodgers, Powers & Schwartz LLP
18 Tremont Street
Suite 500
Boston, MA 02108
(617) 742-7010
RMantell@TheEmploymentLawyers.com

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on June 6, 2013

/s/ Robert S. Mantell
Rodgers, Powers & Schwartz LLP

Tuvell complaint3

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----x
WALTER TUVELL, :
 Plaintiff, :
 : vs. : Civil Action No.
 : 13-cv-11292-DJC
INTERNATIONAL BUSINESS :
MACHINES, INC., :
 Defendant. :
-----x

ORAL DEPOSITION OF KATHLEEN ANN DEAN

On the 27th day of March, 2014, between the hours of 10:06 a.m. and 2:12 p.m., in the offices of Jackson Lewis, P.C., 18 Corporate Woods Boulevard, Third Floor, Albany, New York, before me, LAUREL STEPHENSON, Court Reporter and Notary Public for the State of New York, appeared KATHLEEN ANN DEAN, who, being by me first duly sworn, gave an oral deposition at the instance of the Plaintiff in said cause, pursuant to the Federal Rules of Civil Procedure.

PRESENT:

(By telephonic means)
Rodgers, Powers & Schwartz LLP
(By Robert S. Mantell, Esq.)
18 Tremont Street, Suite 500
Boston, Massachusetts 02108
617.742.7010
RMantell@TheEmploymentLawyers.com
for the Plaintiff.

(Continued)

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1 A. No.

2 Q. Do you recall anything else about your
3 conversation with Diane Adams in which she assigned
4 you Mr. Tuvell's case?

5 A. No.

6 Q. Did you have any conversation with Ms. Adams
7 regarding provision of reasonable accommodations of
8 Mr. Tuvell?

9 A. I don't remember.

10 Q. Can you go to Exhibit 3, please.

11 (The document was handed to the witness,
12 and the witness examined the document.)

13 MR. PORTER: The witness has been handed
14 Exhibit 3 and she's reviewing it. We'll let you
15 know when she's ready to answer questions.

16 A. I have read it.

17 MR. PORTER: She's ready to go.

18 Q. Okay. Do you recognize this document?

19 A. Yes.

20 Q. What is this document?

21 A. This is Lotus Notes to Walter Tuvell from
22 me saying, "Can you call me now."

23 Q. And did you receive the e-mail from Mr.
24 Tuvell that's at the bottom of Exhibit 3?

Kathleen Ann Dean - March 27, 2014

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1 A. Yes.

2 Q. And did you read Mr. Tuvell's e-mail on or
3 about August 11, 2011?

4 A. Where is that e-mail -- oh, yes.

5 Q. By the page --

6 A. The date, yes.

7 Q. And do you see where it says, "I have come
8 down with a sudden condition, which will, I believe
9 require STD." Do you see where it says that?

10 A. Yes.

11 Q. After that he says, "together with some
12 longer-term solution, potentially involving an
13 accommodation." Do you see where it says that?

14 A. Yes.

15 Q. Did you understand that he was saying that
16 he might need a reasonable accommodation?

17 MR. PORTER: Objection to the form.

18 A. An employee can state that they want an
19 accommodation, but we need an IBM medical treatment
20 report form completed by the employee's treating
21 physician.

22 Q. But I'm just asking your understanding back
23 in August 11, 2011, reading Mr. Tuvell's e-mail in
24 Exhibit 3, and my question is, did you understand

Kathleen Ann Dean - March 27, 2014

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1 A. Yes.

2 Q. Is there anything that would refresh your
3 recollection as to whether such a meeting took place?

4 A. I don't know.

5 Q. Could you turn to Exhibit 7, please.

6 MR. PORTER: Just a moment.

7 (The document was handed to the witness,
8 and the witness examined the document.)

9 MR. PORTER: The witness has been handed
10 Exhibit 7. She's going to review it, and we'll let
11 you know when she's ready.

12 Q. Ms. Dean, I'm just going to ask you if you
13 received this.

14 MR. PORTER: Okay. Great. So the question
15 is did you -- did she receive it?

16 Q. Yes. Did you receive this e-mail from Dr.
17 Snyder on or about September 13th, 2011?

18 A. The Lotus Note indicates, here in front of
19 me, that I did receive it.

20 Q. And did you review this e-mail and the
21 attached e-mail thread on or about September 13th,
22 2011?

23 A. I haven't reviewed it right now in its
24 entirety but, yes, I have reviewed it in November

Kathleen Ann Dean - March 27, 2014

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1 13th, 2011.

2 Q. September 13th.

3 A. Oh, sorry. September. Thank you.

4 Q. So let me ask the question again. Did you
5 receive and review this e-mail and the attached
6 e-mail thread on September 13th, 2011?

7 A. Yes.

8 Q. Can you go to Exhibit 8, please.

9 MR. PORTER: Just a moment.

10 (The document was handed to the witness,
11 and the witness examined the document.)

12 MR. PORTER: We've given the witness
13 Exhibit 8. She's reviewing it.

14 A. I've read it.

15 Q. Okay. Do you recognize this document?

16 A. Yes, I do.

17 Q. What is it?

18 A. It's a Lotus Note from and to Dr. Snyder,
19 there's one from -- an e-mail to Walter Tuvell from
20 me, and my correspondence with Dr. Snyder from me.

21 Q. Now going from pages -- the second and
22 third page --

23 A. Okay.

24 Q. -- looking to the e-mail starting in the

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C E R T I F I C A T I O N

I, LAUREL STEPHENSON, a Court Reporter and Notary Public in and for the State of New York, do hereby certify that the foregoing record taken by me at the time and place as noted in the heading hereof is a true and accurate transcript of same, to the best of my ability and belief.

Laurel Stephenson

Date: April 7, 2014

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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-----x
WALTER TUVELL,           :
      Plaintiff,         :
                               :
      vs.                 :   Civil Action
                               :   No.
INTERNATIONAL BUSINESS   :   13-cv-11292-DJC
MACHINES, INC.,         :
      Defendant.         :
-----x

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DEPOSITION OF DANIEL J. FELDMAN, a witness called on behalf of the Plaintiff, taken pursuant to the Federal Rules of Civil Procedure, before Anne H. Bohan, Registered Diplomate Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Rodgers, Powers & Schwartz LLP, 18 Tremont Street, Boston, Massachusetts, on Friday, March 28, 2014, commencing at 9:58 a.m.

PRESENT:

Rodgers, Powers & Schwartz LLP
(By Robert S. Mantell, Esq.)
18 Tremont Street
Boston, MA 02108
617.742.7010; Fax 617.742.7225
rmantell@theemploymentlawyers.com
for the Plaintiff.

Jackson Lewis P.C.
(by Joan Ackerstein, Esq.)
75 Park Plaza
Boston, MA 02116
617.367.0025; Fax 617.367.2155
ackerstj@jacksonlewis.com
for the Defendant.

ALSO PRESENT: Walter Tuvell

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1 Q. What's your work address?

2 A. It's 26 Forest Street, Marlborough,
3 Massachusetts.

4 Q. ZIP code?

5 A. I can't remember it.

6 Q. What's your work email address?

7 A. dfeldman@us.ibm.com.

8 Q. You say you were deposed before. When were
9 you last deposed?

10 A. 1987.

11 Q. What was that deposition in connection
12 with?

13 A. My divorce.

14 Q. I see. Were you deposed on any other
15 occasion?

16 A. No.

17 Q. When were you first hired by IBM?

18 A. I became an IBM employee on January 1st,
19 2011.

20 Q. Where were you employed prior to that?

21 A. Netezza, Incorporated.

22 Q. When did you start at Netezza?

23 A. The middle of August of 2010.

24 Q. Where were you employed prior to being at

Daniel J. Feldman - March 28, 2014

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1 Netezza?

2 A. Sterling Commerce, Incorporated.

3 Q. What was your job at Sterling Commerce,
4 Incorporated?

5 A. Software architect.

6 Q. During what years were you employed at
7 Sterling Commerce?

8 A. From the middle of 2007 through July
9 of 2010.

10 Q. What was your position at Netezza?

11 A. Director of performance architecture.

12 Q. What sort of company is Netezza? What did
13 it make or do?

14 A. Netezza manufactured and sold a data
15 warehousing appliance.

16 Q. What were your job duties as director of
17 performance architecture at Netezza?

18 A. I managed a small group of senior software
19 architects whose charter was to ensure that the
20 Netezza product remained in a leadership position
21 with regard to all other competitors in the data
22 warehousing market, on the basis of performance per
23 dollar.

24 Q. How many people did you manage?

Daniel J. Feldman - March 28, 2014

13

1 A. It's varied over time.

2 Q. At Netezza?

3 A. At Netezza, five.

4 Q. Who were those five individuals that you
5 managed at Netezza?

6 A. Again, it's varied over time. It wasn't
7 always the same people.

8 Q. Well, of the people that you can recall.

9 A. Mike Menninger, Larry Lutz, Felix Santiago,
10 Sujatha Mizar, Ashish Deb. There's one more.
11 Joseph Shkolnick, Walter Tuvell. It's varied over
12 time so at various times.

13 Q. Was Mr. Knabe under you?

14 A. No.

15 Q. Was Mr. Knabe at Netezza while you were at
16 Netezza?

17 A. Yes.

18 Q. Where was Mr. Knabe as compared to you in
19 terms of the hierarchy while you were at Netezza?

20 A. We had the same manager.

21 Q. What was his job title at Netezza?

22 A. I don't remember what his job title was in
23 the few months before we were acquired by IBM.

24 Q. Did you manage Mr. Tuvell during the entire

Daniel J. Feldman - March 28, 2014

14

1 period in which you were at Netezza?

2 A. No. I hired him in November.

3 MS. ACKERSTEIN: Can you just clarify, are
4 you talking about Netezza until December 31, 2010?

5 MR. MANTELL: Yes.

6 Q. So when did you hire Mr. Tuvell?

7 A. Early November of 2010.

8 Q. Did you hire -- when you hired Mr. Tuvell,
9 did you have opportunity to review his resume?

10 A. Yes.

11 Q. Did you have opportunity to review his
12 qualifications for the position?

13 A. Yes.

14 Q. Did you regard Mr. Tuvell as qualified for
15 the position technically?

16 A. I did.

17 Q. Was he well qualified?

18 A. Yes.

19 Q. Did you hire Ms. Mizar at Netezza?

20 A. Yes.

21 Q. When did you hire Ms. Mizar?

22 A. She started the end of November of 2010.

23 Q. Can you spell her first name?

24 A. S-u-j-a-t-h-a.

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1 the rest of the team, and that was his response.

2 Q. Did he explain that response?

3 A. No.

4 Q. At some point did Mr. Knabe indicate to you
5 that he did not want to work with Mr. Tuvell
6 anymore?

7 A. Yes.

8 Q. When was that?

9 A. I don't remember the exact date. It was
10 after these notes that you presented as Exhibit 6.

11 (Document marked as Feldman
12 Exhibit 7 for identification)

13 MR. MANTELL: This is Exhibit 7.

14 Q. I'm going to ask you specifically about
15 Page 11033.

16 A. Yes.

17 Q. With respect to Page 11033, who wrote these
18 notes?

19 A. I did.

20 Q. When did you write these notes?

21 A. On the date indicated in the margin.

22 Q. Is it fair to say you wrote these notes on
23 June 9, 2011?

24 A. Yes.

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1 Q. Can you just read those notes into the
2 record, please.

3 A. "6/9. Fritz regarding Walt. Doesn't
4 believe he can make things work with Walt. 'Not
5 fundamentally a micro or milli manager.' Walt
6 doesn't work this way.

7 "'Devesh asks why Walt isn't getting it
8 done.'" That's a quotation of Fritz as was the "not
9 fundamentally a micro or milli manager."

10 "Major communication and communication
11 style issue. Started to write a C program to prove
12 to Walt that it was possible to compile stuff on the
13 SPU and have it work. 'I don't see a practical way
14 to patch this up.'"

15 Q. Is this the first time that Mr. Knabe
16 communicated this information, that he didn't feel
17 there was a future in terms of his work relationship
18 with Mr. Tuvell?

19 A. I believe so, yes.

20 Q. How did you respond to that?

21 A. I don't remember the specific words of the
22 conversation I had with him.

23 Q. Is there anything else from this
24 conversation of June 9th with Mr. Knabe that you can

Daniel J. Feldman - March 28, 2014

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1 recall?

2 A. No.

3 Q. Did Mr. Knabe ever call Mr. Tuvell a bully?

4 A. No.

5 Q. Did Mr. Knabe ever call Mr. Tuvell a liar?

6 A. No.

7 Q. Did you ever tell Mr. Tuvell that Mr. Knabe
8 called him a bully?

9 A. Absolutely not.

10 Q. Did you ever tell Mr. Tuvell that Mr. Knabe
11 called him a liar?

12 A. No.

13 Q. Did you agree with Mr. Knabe that the work
14 relationship between Mr. Tuvell and Mr. Knabe was
15 irreparable as of June 9, 2011?

16 A. Yes, I did.

17 Q. Does Mr. Knabe have any declared
18 disability?

19 A. Not that I'm aware of.

20 Q. You're not aware of any disability that he
21 has, correct?

22 A. Correct.

23 Q. To your knowledge, has Mr. Knabe ever filed
24 a discrimination or harassment complaint against an

Daniel J. Feldman - March 28, 2014

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1 A. No.

2 Q. No?

3 A. No.

4 Q. Was Mr. Tuvell reassigned to different job
5 duties at some point?

6 A. He was reassigned to different specific
7 tasks, yes.

8 Q. When was that reassignment?

9 A. On or about June 10th.

10 Q. What tasks did Mr. Tuvell have that he
11 would no longer do?

12 A. He was no longer assigned to support the
13 Wahoo team in Cambridge and was reassigned to
14 provide performance architecture support to other
15 projects in Marlborough.

16 Q. Did Mr. Tuvell retain any assignments as of
17 June 10, 2011?

18 A. Any tasks he might have been doing that
19 ~~were germane to the operation of our specific group~~
20 rather than one of the specific development projects
21 we were supporting, and I can't remember if there
22 were any of those outstanding at the time, but had
23 there been, he would have retained those.

24 Q. But you don't recall whether he was working

Daniel J. Feldman - March 28, 2014

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1 on that or not?

2 A. I don't.

3 Q. So is it fair to say that Mr. Tuvell's
4 roles and Ms. Mizar's roles were switched?

5 A. Yes.

6 Q. Now, was there any prestige inherent in the
7 work that Mr. Tuvell had been doing as opposed to
8 what Ms. Mizar had been doing?

9 A. Not in my mind.

10 Q. Would you agree with me that the work that
11 Mr. Tuvell had been doing was at a higher level than
12 what Ms. Mizar had been doing?

13 MS. ACKERSTEIN: Objection.

14 A. No, I wouldn't agree with that.

15 Q. Is it fair to say that Mr. Tuvell at this
16 time was being paid more than Ms. Mizar?

17 A. Yes.

18 Q. Approximately how much more was he being
19 paid than her?

20 A. I don't recall his specific salary but
21 approximately \$35,000 per year more.

22 (Document marked as Feldman
23 Exhibit 9 for identification)

24 Q. Could you review Exhibit 9, please.

Daniel J. Feldman - March 28, 2014

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1 A. (Witness reviews document)

2 Q. Now, in changing Mr. Tuvell's and Ms.
3 Mizar's job functions, who decided to do that?

4 A. I did.

5 Q. Did you consult with anyone in doing that?

6 A. No.

7 Q. Why did you make the decision to do that?

8 A. Because it was clear that Tuvell and Knabe
9 could not work effectively together, and my
10 responsibility is to get the work done.

11 Q. It seemed clear to you based on what, what
12 incidents, or why did you believe that?

13 A. The rather routine and, in my view, nasty
14 complaining that Dr. Tuvell was engaged in during
15 weekly status reports and meetings with me about the
16 Wahoo project and other team members on the project,
17 and because of Dr. Knabe's inability to work with
18 him effectively and his admitted inability to work
19 with Dr. Knabe.

20 Q. So in switching Mr. Tuvell's roles with Ms.
21 Mizar, he would no longer work on Wahoo; is that
22 correct?

23 A. That's correct.

24 Q. Now, with respect to Exhibit 9, at the

Daniel J. Feldman - March 28, 2014

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1 the middle of the first page is from you to Mr.
2 Knabe and was sent on June 14, 2011?

3 A. Yes.

4 Q. You were requesting any documentation on
5 Walt from Mr. Knabe?

6 A. Yes.

7 Q. Why did you request this documentation?

8 A. Because he had indicated that he had notes
9 that he could share with me.

10 Q. Did he respond?

11 A. Well, the email directly above the one you
12 cited says that he was working on it.

13 Q. Did you ever get that documentation?

14 A. No.

15 (Document marked as Feldman
16 Exhibit 13 for identification)

17 Q. Could you review Exhibit 13, please.

18 A. (Witness reviews document)

19 Q. Before we get to 13 I want to go back to
20 Exhibit 11 and ask whether you have testified to all
21 the interactions that you had with Mr. Tuvell that
22 you felt made him potentially dangerous or that
23 indicated to you that he was potentially dangerous?

24 A. I'm sorry, I don't understand the question.

Daniel J. Feldman - March 28, 2014

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1 Q. You've alluded to a couple of interactions,
2 one where he took some paper out of your hand and
3 another one he yelled at you?

4 A. Yes.

5 Q. Was there any other basis for you to
6 believe as of June 13th that Mr. Tuvell was
7 potentially dangerous?

8 A. Just his pattern of escalating
9 confrontation and anger in his written
10 communication.

11 Q. Those communications are some of them which
12 we looked at today, correct?

13 A. Correct.

14 Q. Any other verbal interactions that
15 supported your belief that he was potentially
16 dangerous?

17 A. Nothing that I can recall.

18 Q. Now, looking to Exhibit 13, going to the
19 last page, on the second-to-last and then the last
20 page, this appears to be an email from you to Mr.
21 Tuvell and Ms. Mizar which you sent on June 15th,
22 2011; is that correct? Ohm the bottom of the page?

23 A. The very bottom-most of the two captioned
24 emails here?

Doris O. Wong Associates, Inc.

Daniel J. Feldman - March 28, 2014

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1 Q. Yes. The very bottom, on the third page.

2 A. Yes, Tuvell, Mizar and a copy to McCabe.

3 Q. In this email you're requesting a status
4 update on the transition tasks?

5 A. Yes.

6 Q. Then in the middle of the second page, did
7 you send this email to Mr. Tuvell and Ms. McCabe on
8 or about June 15, 2011?

9 A. Yes.

10 Q. With respect to not having a status report
11 from Mr. Tuvell?

12 A. Um-hum.

13 Q. Did you feel that Mr. Tuvell had failed to
14 perform adequately and failed to provide a status
15 report?

16 A. Yes.

17 Q. You were informing him of that fact?

18 A. Yes.

19 Q. Now, going to the first and second page, is
20 it fair to say this is an email from Mr. Tuvell to
21 you that you received on or about June 15, 2011?

22 A. Yes.

23 Q. Is it fair to say that from this email it
24 was your understanding that Mr. Tuvell believed that

Daniel J. Feldman - March 28, 2014

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1 he was being discriminated against on the basis of
2 age and sex and maybe race?

3 MS. ACKERSTEIN: Objection.

4 A. It is on the basis of this email that I
5 believe he was suggesting that that might be
6 possible.

7 Q. On this email he was accusing you of
8 engaging in retaliation? I'm going to point you to
9 the first page right in the middle of the page. It
10 says "...you insist on interacting with me in this
11 sort of blatant (not even an attempt at subtlety)
12 snide harassment/retaliation."

13 A. Yes.

14 Q. You understood he was accusing you of
15 retaliation?

16 A. He was accusing me of harassment/
17 retaliation.

18 MR. MANTELL: Mark this.

19 ~~(Document marked as Feldman~~
20 Exhibit 14 for identification)

21 Q. Would you review Exhibit 14, please.

22 A. (Witness reviews document)

23 Q. Looking to the email at the bottom of the
24 page, is this an email from Ms. Mizar to you which

Daniel J. Feldman - March 28, 2014

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1 you received on or about June 14, 2011?

2 A. Yes.

3 Q. Is it fair to say this email is the
4 transition status that Ms. Mizar reported to you?

5 A. It is.

6 Q. Is it fair to say that it reports on the
7 status of projects which Ms. Mizar handed off to Mr.
8 Tuvell and that Mr. Tuvell handed off to Ms. Mizar?

9 A. Yes.

10 Q. It says at the bottom, "Walt, please feel
11 free to add anything I might have forgotten." Do
12 you see where it says that?

13 A. I do.

14 Q. Did you regard Ms. Mizar's transition
15 status report as adequate?

16 A. At the time, yes.

17 Q. Did you discipline or counsel Ms. Mizar
18 with respect to the adequacy of her transition
19 report?

20 A. Since I considered that adequate, no.

21 Q. Yet you felt Mr. Tuvell acted
22 inappropriately in failing to provide a report from
23 his point of view?

24 A. Correct.

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1 Q. Why is that?

2 A. A, because I had asked him to, and B,
3 because during transitions of tasks like this, it is
4 important to find out if one party believes that the
5 transition is going well and another doesn't or if
6 there are specific areas that need my attention.

7 MR. MANTELL: Why don't we break for lunch.
8 It's about 12:22. Why don't we meet back here at
9 maybe 1:10?

10 MS. ACKERSTEIN: Or 1:15.

11 MR. MANTELL: 1:15.

12 MS. ACKERSTEIN: Thank you.

13 (Luncheon recess from 12:22 to 1:17 p.m.)
14
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1 particular incident?

2 A. I can't recall.

3 Q. But it was after June 13th?

4 A. I couldn't say.

5 Q. It might have been before?

6 A. It might well have, yes.

7 Q. Did you ever discipline or counsel Ms.

8 Mizar?

9 A. Discipline, no. "Counsel" is a broad term,
10 so it's fair to say that I counsel all of my
11 employees at one time or another.

12 Q. Did you ever indicate displeasure with Ms.
13 Mizar with respect to her transition reports?

14 A. No.

15 MR. MANTELL: Can I have this marked,
16 please.

17 (Document marked as Feldman
18 Exhibit 15 for identification)

19 ~~Q. Is it fair to say that Exhibit 15 is an~~
20 email from Ms. Mizar to you that you received on or
21 about June 17, 2011?

22 A. It is.

23 Q. In this email Ms. Mizar provides you
24 transition statuses for the last two days?

Daniel J. Feldman - March 28, 2014

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1 A. Correct.

2 Q. Is it fair to say she missed one day?

3 A. That's suggested by the fact there are two
4 days in the email, but I can't say for sure.

5 Q. Did you discipline or counsel Ms. Mizar for
6 missing a day?

7 A. I can't remember.

8 Q. Now, on or about June 15th, did you request
9 that Mr. Tuvell provide you a day-to-day schedule
10 for the next three weeks?

11 A. I believe so.

12 Q. Why did you do that?

13 A. He had an impending medical leave planned,
14 and I wanted to make sure that the work that he was
15 doing was well planned and that there was a way to
16 understand if any of it was not going to get done as
17 early as possible.

18 Q. Did Mr. Tuvell request an example of such a
19 schedule?

20 A. Yes.

21 Q. Did you provide him one?

22 A. I believe so, yes.

23 Q. Did you require other people to provide
24 three-day week-to-week schedules?

Daniel J. Feldman - March 28, 2014

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1 use any more company time to work on his appeal?

2 A. I don't believe so.

3 Q. At this meeting on July 5th, 2011, did Mr.
4 Tuvell complain about the fact that you were
5 unwilling to have a three-way counseling session
6 with him and Mr. Knabe to resolve the professional
7 dispute? And that's in the paragraph below the one
8 we were just discussing.

9 A. Oh, yes. Apparently so, yes.

10 Q. Going to the first page of Exhibit 24, is
11 that an email from Ms. McCabe to you that you
12 received on or about July 6, 2011?

13 A. Yes, it is.

14 Q. It looks like Ms. McCabe praises you. She
15 Says, "Nicely done, Dan, it appears from your time
16 with him that you were able to effectively
17 communicate"? Do you see where it says that?

18 A. I do.

19 ~~Q. Was it your understanding she was praising~~
20 you in your efforts to communicate with Mr. Tuvell?

21 A. I believe so, yes.

22 Q. Now, at some point Mr. Tuvell wrote an
23 email that said, "You can easily find it by
24 searching the Wiki for 'blktrace,' or if you're lazy

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1 you can just click this link." Do you remember him
2 writing an email like that?

3 A. I do.

4 Q. Did you feel that that email was
5 inappropriate?

6 A. I did.

7 Q. Why did you feel it was inappropriate?

8 A. Because the suggestion in there that
9 colleagues are too lazy to search the Wiki was
10 offensive.

11 Q. Did anyone complain to you about that?

12 A. No.

13 (Document marked as Feldman
14 Exhibit 25 for identification)

15 Q. Could you review Exhibit 25, please.

16 A. (Witness reviews document)

17 Q. The emails in this Exhibit 25 are slightly
18 out of order, so we'll go through them one by one.

19 ~~Going to the third page marked 10504, is this an~~
20 accurate copy of an email sent by Mr. Tuvell to you
21 on or about July 6, 2011, at 9:27 p.m.?

22 A. The one that begins "The Wiki is updated"?

23 Q. Yes.

24 A. Yes.

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1 Q. This is the email that you felt was
2 offensive?

3 A. Yes.

4 Q. Is it fair to say that this email was sent
5 the day after you told Mr. Tuvell that if it were
6 you you would not pursue the appeal?

7 MS. ACKERSTEIN: Objection.

8 A. It's fair to say it was sent on July 6th.

9 Q. Going to the preceding page marked 10503,
10 is it fair to say that is an email from you to Mr.
11 Tuvell dated July 11, 2011?

12 A. Yes.

13 Q. Is it fair to say that in this email the
14 reference to someone being lazy is the sort of thing
15 you want to avoid?

16 A. Is there a question there? Sorry.

17 Q. Did you write this email?

18 A. Yes.

19 Q. Is it fair to say that your purpose in
20 writing this email was to tell Mr. Tuvell that his
21 previous email mentioning the word "lazy" was
22 inappropriate?

23 A. Yes.

24 Q. In response to this email, did Mr. Tuvell

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1 send out an apology?

2 A. Yes.

3 Q. Is that apology -- does that start on
4 Page 10504 in the middle?

5 A. Yes, roughly, in the middle. The date on
6 this has been clipped somehow.

7 Q. Correct.

8 A. But I believe that is the email he sent in
9 response.

10 Q. Do you believe he sent that after your
11 email of July 11, 2011?

12 A. Yes.

13 Q. Then can you go to Page 1. Looking to the
14 second email on Page 1, is that an email from Mr.
15 Tuvell to you dated July 6, 2011?

16 A. Yes.

17 Q. That email says, "My use of the word 'lazy'
18 in this context was intended to be jocular." Do you
19 see where it says that?

20 A. Yes.

21 Q. Now, this July 6th email appears to take
22 place before your July 11th email?

23 A. Yes.

24 Q. Had you communicated your displeasure with

Daniel J. Feldman - March 28, 2014

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1 the "lazy" email before July 11th?

2 A. I would have communicated it almost
3 immediately upon receiving it. So I believe that
4 there is something wrong with the way this document
5 was pasted together.

6 Q. So you believe that Mr. Tuvell sent the
7 lazy email on July 6, 2011, that you responded
8 almost immediately, and then Mr. Tuvell responded
9 with the apology soon after that, correct?

10 A. Correct.

11 Q. Then going to Page 10505.

12 A. Yes.

13 Q. Is this an accurate copy of an email sent
14 from Mr. Tuvell to you and to Garth Dickie which you
15 received in July 2011?

16 A. Yes.

17 Q. In this email Mr. Tuvell apologizes for the
18 prior apology, correct?

19 A. Yes.

20 Q. Is it fair to say that in response to that
21 email, you sent the first email on Page 1 of
22 Exhibit 25; is that correct?

23 A. Yes.

24 Q. Did you send that first email to Ms. Adams

Daniel J. Feldman - March 28, 2014

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1 on July 26, 2011?

2 A. Yes.

3 Q. Is it fair to say that you were suggesting
4 to Ms. Adams that Mr. Tuvell be issued a formal
5 warning letter based on the apology for the apology
6 email?

7 A. Yes.

8 Q. So is it fair to say that the apology for
9 the apology email was the motivating factor for the
10 formal warning letter?

11 MS. ACKERSTEIN: Objection.

12 A. The formal warning letter was motivated by
13 a long series of unprofessional behaviors, and the
14 apology for the apology letter was the last in that
15 series before the warning was issued.

16 Q. The straw that broke the camel's back?

17 MS. ACKERSTEIN: Objection.

18 Q. Would that be fair to say?

19 MS. ACKERSTEIN: Objection.

20 A. The straw that broke the camel's back, I
21 don't think so. I don't think there was a
22 catastrophic collapse as a result of it; it was just
23 an accumulation of transgressions that needed to be
24 corrected.

Daniel J. Feldman - March 28, 2014

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1 Q. But would it be fair to say you wanted to
2 issue the formal warning letter in part based on the
3 apology for the apology email?

4 A. Yes.

5 Q. How did Ms. Adams respond to your inquiry?

6 A. She agreed.

7 Q. She agreed. Did you speak to her, or did
8 she agree in writing?

9 A. I don't remember for sure.

10 Q. Now, at some point the formal warning
11 letter was issued, correct?

12 A. Correct.

13 Q. Was that issued at a meeting?

14 A. Yes.

15 Q. Do you recall the date of the meeting?

16 A. I don't.

17 Q. If I told you August 3rd, 2011, would that
18 sound accurate?

19 A. It would.

20 Q. What was said at that meeting?

21 A. I do not remember the exact words.

22 Q. Generally what was said?

23 A. Generally I pointed out that Dr. Tuvell
24 wasn't complying with the expectations for conduct

Daniel J. Feldman - March 28, 2014

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1 email you sent to Mr. Tuvell on or about
2 November 23rd, 2011?

3 A. Yes.

4 Q. Now, you write "IBM" -- this is at the
5 beginning of the second paragraph -- "...IBM does
6 not consider changing your management team to be a
7 reasonable accommodation." Do you see where it says
8 that?

9 A. I do.

10 Q. Did you come to that determination?

11 A. No.

12 Q. Who told you that that was IBM's
13 determination?

14 MS. ACKERSTEIN: I'm going to instruct you
15 not to answer to the extent it would require that
16 you disclose a communication with an attorney.

17 A. I can't answer.

18 Q. Now, in this email you invite Mr. Tuvell to
19 explore other positions through the Global

20 Opportunity Marketplace, correct?

21 A. Correct.

22 Q. What is the Global Opportunity Marketplace?

23 A. It's a listing of all jobs that are
24 available in IBM and Web-based search tools for

Daniel J. Feldman - March 28, 2014

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1 A. -- from the conversation.

2 Q. But at the time that you wrote Ms. Adams,
3 was it your intention to provide accurate
4 information?

5 A. Yes.

6 (Document marked as Feldman
7 Exhibit 36 for identification)

8 Q. Could you review Exhibit 36, please.

9 A. (Witness reviews document) Okay.

10 Q. Does Exhibit 36 accurately reflect a
11 Sametime exchange that you had with Mr. Kime on
12 December 15, 2011?

13 A. I believe so.

14 (Document marked as Feldman
15 Exhibit 37 for identification)

16 Q. Would you review Exhibit 37, please.

17 A. (Witness reviews document) Okay.

18 Q. Does Exhibit 37 contain an accurate copy of
19 an email you sent to Mr. Feldman -- excuse me. Does
20 Exhibit 37 reflect an accurate copy of your email to
21 Mr. Tuvell which you sent on December 16, 2011?

22 A. I believe so.

23 (Document marked as Feldman
24 Exhibit 38 for identification)

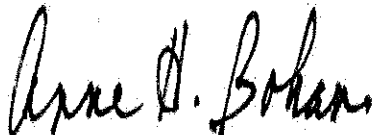
1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Anne H. Bohan, RDR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 28th day of
6 March, 2014, at 9:58 a.m., the person hereinbefore
7 named, who was by me duly sworn to testify to the
8 truth and nothing but the truth of his knowledge
9 touching and concerning the matters in controversy
10 in this cause; that he was thereupon examined upon
11 his oath, and his examination reduced to typewriting
12 under my direction; and that the deposition is a
13 true record of the testimony given by the witness.

14 I further certify that I am neither attorney or
15 counsel for, nor related to or employed by, any
16 attorney or counsel employed by the parties hereto
17 or financially interested in the action.

18 In witness whereof, I have hereunto set my hand
19 and affixed my notarial seal this 14th day of April,
20 2014.

21 

22 Notary Public

23
24 Commission expires 12/9/2016

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Exhibits 1 to 28

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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-----x
WALTER TUVELL,           :
      Plaintiff,         :
                        :
      vs.                 :   C.A. No.
                        :   13-CV-11292-DJC
INTERNATIONAL BUSINESS   :
MACHINES, INC.,         :
      Defendant.        :
-----x

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DEPOSITION OF STEPHANIE ROSS, L.I.C.S.W., a witness called on behalf of the Defendant, taken pursuant to the Federal Rules of Civil Procedure, before Ken A. DiFraia, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Jackson Lewis P.C., 75 Park Plaza, Boston, Massachusetts, on Friday, April 11, 2014, commencing at 10:00 a.m.

PRESENT:

Rodgers, Powers & Schwartz LLP
(Robert S. Mantell, Esq.)
18 Tremont Street, Boston, MA 02108,
RMantell@TheEmploymentLawyers.com
617.742,7010, for the Plaintiff.

~~Jackson Lewis P.C.~~
(by Joan Ackerstein, Esq.)
75 Park Plaza, Boston, MA 02116,
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617.367.0025, for the Defendant.

ALSO PRESENT: Walter Tuvell

* * * * *

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 A. That's correct.

2 Q. Does that lead you to believe that at least
3 by 2003, these individual psychotherapies were for
4 Mr. Tuvell?

5 A. Yes.

6 Q. And that would be the same for the balance
7 since you have --

8 A. It's a reasonable thing to surmise, but
9 unless I corroborate it with my book, I couldn't
10 tell you; but that certainly indicates the
11 possibility that at that point it was being billed
12 in that particular way.

13 (Document marked as Ross

14 Exhibit 4 for identification)

15 Q. Exhibit 4 is a copy of an IBM Medical
16 Treatment Report form that appears to be signed by
17 you on October 12, 2011. You have seen this before?

18 A. (Examines document) Yes.

19 Q. The top where it says, "To be completed by
20 Employee," I take it that is not your handwriting?

21 A. Correct.

22 Q. But everything below To be completed by the
23 Healthcare Provider is your handwriting?

24 A. Yes.

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 Q. On the second page, the employee name
2 appears. I take it that is not your handwriting?

3 A. Correct.

4 Q. But everything else on the document is your
5 handwriting?

6 A. Correct.

7 Q. Do you recall that this is a form that you
8 completed on October 12, 2011 that went to IBM in
9 connection with Mr. Tuvell's leave of absence?

10 A. My copy says that it was 10/14/11. I don't
11 know how that's a difference there.

12 Q. Look at the bottom, where you signed it.

13 A. Oh, I see. Okay.

14 Q. You see that says, "10/12/11"?

15 A. Yes. So that's the date I signed it.

16 Q. So my question is did you understand that
17 this was going to IBM?

18 A. I did.

19 ~~Q. Did you understand that this was because~~
20 Mr. Tuvell was seeking a medical leave of absence?

21 A. Yes.

22 Q. You completed this form in your office?

23 A. I believe so. I don't know if I did it at
24 my office or at home. I don't know how I would

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 know.

2 Q. You signed your name to it?

3 A. Correct.

4 Q. I assume that you told the truth on this
5 form?

6 A. As I knew it at the moment, yes.

7 Q. You gave your best professional opinion
8 about what was going on?

9 A. Yes.

10 Q. You put down two diagnoses. One was acute
11 stress reaction, and one was adjustment disorder
12 with mixed anxiety and depression?

13 A. Yes.

14 Q. The question in Work Ability, Is the
15 employee totally impaired for work, you wrote "Yes,"
16 correct?

17 A. Where are you?

18 Q. Roman numeral III, Work Ability.

19 A. ~~(Examines document) That's correct.~~

20 Q. Where it says, "If totally impaired, give
21 the date the total impairment began," you put
22 8/15/11?

23 A. Yes.

24 Q. It says, "Explain why the employee is

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 unable to work." Can you read to us what you wrote.

2 A. "Ongoing acute stress symptoms especially
3 regarding the perception of retaliation following
4 sudden demotion without cause, disruption of sleep,
5 eating, symptoms of helplessness and anxiety."

6 Q. Underneath that it says, "Can the employee
7 work with temporary modifications?" You said, "No";
8 is that correct?

9 A. That's correct.

10 Q. It says below that, "Explain in functional
11 terms why the employee is unable to work with
12 modifications." You wrote, "Without safe resolution
13 of current hostile work environment without fear of
14 revival" --

15 A. Reprisal.

16 Q. -- "reprisal; symptoms will persist," did I
17 read that accurately"?

18 A. Correct.

19 Q. On the second page you were asked to
20 identify the levels of impairment, do you see that?

21 A. Yes.

22 Q. I assume you read the ratings before you
23 filled this out?

24 A. Correct.

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 Q. So, for example, 3 is a moderate
2 impairment. 4 is a serious impairment. 5 is a
3 severe impairment. Do you see that?

4 A. Uh-huh.

5 Q. Yes?

6 A. Yes.

7 Q. You rated under Social Functioning
8 Mr. Tuvell as having a serious impairment in getting
9 along with others without behavioral extremes and
10 initiating social contacts, negotiating and
11 compromising; is that right?

12 A. Correct.

13 Q. And under Adaption to Stress, you indicated
14 that Mr. Tuvell was severely impaired in managing
15 conflicts with others, negotiate, compromise, and
16 had a serious impairment with respect to set
17 realistic goals, has good autonomous judgment; is
18 that correct?

19 A. Correct.

20 Q. And the overall impairment rating you rated
21 as 3 to 4 between a moderate impairment and a
22 serious impairment; is that correct?

23 A. Correct.

24 Q. And this was your best professional opinion

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 at the time?

2 A. At the time, yes.

3 (Document marked as Ross

4 Exhibit 5 for identification)

5 Q. Exhibit 5 is another Medical Treatment

6 Report form. This one is completed by you on

7 November 3, 2011, do you see that?

8 A. (Examines document) Yes.

9 Q. All of the handwriting on the form below To
10 be completed by the healthcare provider is your
11 handwriting?

12 A. Correct.

13 Q. On the second page, all of the handwriting
14 below Areas of Function is yours?

15 A. Correct.

16 Q. On the first page, the diagnosis is now
17 Posttraumatic Stress Disorder, do you see that?

18 A. Correct.

19 Q. And 309.81, what's that?

20 A. That's from the diagnostics in the DSM-IV.
21 That's considered the diagnostics code.

22 Q. So you changed your diagnosis from the form
23 completed in October to the form completed in
24 November?

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 A. I did.

2 Q. In Item 3, Work Ability, "Is the employee
3 totally impaired for work," you wrote "Yes"; is that
4 correct?

5 A. Correct.

6 Q. And under "If totally impaired, explain why
7 the employee is unable to work," can you read to us
8 what you wrote.

9 A. "Patient continues to experience intense
10 triggering of symptoms with any reference to work
11 environment and incident of demotion and lack of
12 investigation. Symptoms of high reactivity, anxiety
13 and fear resume easily."

14 Q. And you signed this on November 3, 2011?

15 A. That's correct.

16 Q. Was this your best professional opinion
17 about the circumstances at the time you signed it?

18 A. I believe that's true.

19 Q. Then on the second page, again you were
20 required to rate the level of impairment. Under
21 Social Functioning, you noted that Mr. Tuvell had a
22 serious impairment with respect to "get along with
23 others without behavioral extremes, initiate social
24 contacts, negotiate and compromise, and interact and

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 actively participate in group activities"; is that
2 right?

3 A. Correct.

4 Q. Then in Adaption to Stress, you said
5 Mr. Tuvell had a serious impairment with respect to
6 managing conflict with others, negotiate, comprise,
7 and set realistic goals, has good autonomous
8 judgment; is that correct?

9 A. Correct.

10 Q. And you gave him an overall impairment
11 rating of 3 to 4, which was between a moderate
12 impairment and a serious impairment?

13 A. Correct.

14 Q. Now, what was the incident of demotion?

15 A. Mr. Tuvell reported that -- well, in
16 describing some of the circumstances of his work
17 reactivity and triggering, he described a situation
18 in which he was asked to -- he was -- well, he was
19 taken off of -- I don't know what his words were --
20 a project that he had been previously working on and
21 was asked to step aside. From his description, the
22 person who was going to take over that project was
23 someone who was much younger -- I don't recall if he
24 said less experienced -- and that he was being moved

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 to some other piece of work. That's what he
2 perceived to be a demotion. That is how he
3 referenced his experience of that incident in
4 recalling what was traumatizing him.

5 Q. Was there any change in title?

6 A. Not to my knowledge.

7 Q. Was there any change in salary?

8 A. Not to my knowledge.

9 Q. Is it fair to say you didn't form an
10 opinion that he was demoted?

11 A. Correct.

12 Q. You just reported his perception of a
13 demotion?

14 A. Correct.

15 Q. What was the "intense triggering of
16 symptoms with any return to the work environment"?

17 A. Even in conversation Mr. Tuvell became
18 extremely upset. He had trouble speaking. You
19 know, he would cry. He would shake when talking
20 about the work setting and the things that he
21 experienced going on. Shall I go on?

22 Q. Yes.

23 A. Well, is there anything else you want to be
24 particular on?

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 Q. No. You said that there was an intense
2 triggering of symptoms. I was interested in what
3 the intense triggering was.

4 A. Well, at that point any contact with people
5 from work, any discussion about work, going anywhere
6 near the work facility at that time was a
7 circumstance in which he was triggered into a state
8 that involved hyper-reactivity, hyper-arousal. He
9 was in a state of very difficult insomnia. He was
10 pressured in his communication style. He had a
11 significant amount of obsessive thinking. He was
12 flooded. Whenever he started to think, it was like
13 he could not stop. All of the things would cascade.
14 His mood was both depressed and anxious
15 simultaneously. I'm sure there's more. Those are
16 the ones I'm recalling at the moment.

17 Q. Did he mention any names to you?

18 A. Names?

19 Q. Yes, of people who were the subject of the
20 triggering.

21 A. Sure.

22 Q. Do you remember who they were?

23 A. The two that come to mind immediately are a
24 person named "Fritz" -- I don't remember the last

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 name -- and a person named -- and his direct boss,
2 Dan. The triggering was probably more severe with
3 Dan.

4 Q. So your belief that Mr. Tuvell could not
5 return to the work situation was that his motions
6 were so intense that it was going to retrigger all
7 of the things that you are talking about, his not
8 sleeping, his obsessive thoughts, his depression,
9 all of that? Just going into that building and
10 seeing Dan Feldman or Fritz Knabe might trigger
11 those strong reactions?

12 A. Yes.

13 Q. And so that's the reason that you indicated
14 that for some period of time he was totally impaired
15 from work?

16 A. I did, and I was concerned for his mental
17 stability at the time.

18 Q. Now, go back and look at Exhibit 3 for a
19 moment. In 2011 --

20 A. Wait a minute. This is 5. Is that 3?

21 Q. 3 is the long list of sessions that you
22 had.

23 A. (Examines documents) Okay, I have it.

24 Q. Do you see the page for 2011?

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 Microsoft?

2 A. It could be. It could be a factor.

3 Q. Now, look at Exhibit 6. This is a third
4 MTR. The top half is not your -- or the top above
5 the To be completed by the healthcare provider is
6 not your handwriting; is that correct?

7 A. Correct.

8 Q. But the bottom To be completed by the
9 healthcare provider is yours?

10 A. Correct.

11 Q. On the second page below the Areas of
12 Function, that's your handwriting?

13 A. Yes.

14 Q. You signed this document on December 19,
15 2011?

16 A. Yes.

17 Q. At the time you completed this document,
18 you knew that Mr. Tuvell was applying for another
19 position at IBM?

20 A. I don't recall if I knew that, but if that
21 is when he was, I was likely to know.

22 Q. Well, certainly by December 1st he was
23 speaking with Chris Kime, the hiring manager. Do
24 you remember hearing that name?

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 A. Yes.

2 Q. So you believe that probably Mr. Tuvell
3 shared with you that he was looking for a job at
4 another position at IBM?

5 A. Yes.

6 Q. The diagnosis you put down was 309.81. Is
7 that the sign -- the DSM for posttraumatic stress
8 disorder?

9 A. Correct.

10 Q. "Is the employee totally impaired for
11 work," you wrote "Yes, for current job assignment,"
12 do you see that?

13 A. Yes.

14 Q. You meant that you still believed that
15 Mr. Tuvell could not go back to work where he had
16 been with Mr. Feldman and Mr. Knabe and the hostile
17 work environment that he was perceiving?

18 A. Correct.

19 Q. If he was unable to work, you needed to
20 give an explanation. You wrote: "Patient continues
21 to experience extreme triggering regarding
22 workplace previously assigned"?

23 A. Correct.

24 Q. Then you wrote, "Only modification that

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 would be possible is a change of supervisor and
2 setting," do you see that?

3 A. Correct.

4 Q. I assume that you were hoping that you
5 could assist Mr. Tuvell in getting a new assignment
6 at IBM?

7 A. No, I wouldn't say that.

8 Q. You did not care one way or another?

9 A. I wrote what I understood at the time to be
10 true, which is that a return to that particular
11 place would not be in his best interest for the sake
12 of his mental health.

13 Q. But you thought if he had a different
14 supervisor and a different setting, it would be
15 feasible?

16 A. It would be possible.

17 Q. You also wrote, "Unable to return to
18 previous setting or current supervisor" -- "with
19 current supervisor and setting," do you see that?

20 A. Correct.

21 Q. "The PTSD system" --

22 MR. MANTELL: Symptoms.

23 Q. -- "symptoms would exacerbate immediately"?

24 A. Correct, but what I actually wrote starts

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 above, "Unable to" -- oh, no, I see what you are
2 saying. Yes. That was my add on to why he could
3 not return to the current supervisor and setting.
4 It appeared to me that that would exacerbate his
5 symptoms, which I was in the business of trying to
6 stabilize, neutralize and reduce those symptoms so
7 that he could actually function in some way, in some
8 setting so that he could go back to being a
9 provider.

10 Q. On the second page of this document, you
11 indicated Mr. Tuvell had a serious impairment with
12 respect to "get along with others without behavioral
13 extremes, initiate social contacts, negotiate and
14 compromise, and interact and actively participate in
15 group activities," do you see that?

16 A. Yes.

17 Q. And that was your best professional belief
18 at the time?

19 A. Yes.

20 Q. Then in the Adaptation to Stress, you
21 indicated that Mr. Tuvell had a severe impairment in
22 manage conflicts with others, negotiate, compromise,
23 and set realistic goals, has good autonomous
24 judgment, do you see that?

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 Q. The DSM-IV or V.

2 A. No.

3 Q. No?

4 A. I disagree entirely. You are right that I
5 vary from the fact that I believe PTSD is
6 diagnosable in spite of a nonlife-threatening event.
7 That is true. I don't disagree that avoidance is
8 one of the primary symptoms of a PTSD client, and I
9 do believe that Mr. Tuvell continued to have that as
10 part of his symptomatology.

11 Q. While he's working on all his complaints
12 while --

13 A. Completely at the same time. Because doing
14 this in his office, in his room with his computer is
15 a completely different circumstance than being in
16 the room with the people.

17 Mr. Tuvell was unable to drive within a
18 50 mile radius -- 20 mile radius of where he worked
19 ~~for a period of time without becoming hysterical.~~
20 That creates avoidance. That means the idea of
21 being there is an overwhelming experience. The fact
22 he's at his computer doing research and thinking
23 about things and constructing stuff is not about
24 avoidance. That's about something else. The two

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 the IBM Position Statement filed in the MCAD matter;
2 is that what it was?

3 A. I guess so. I doubt I ever even looked at
4 it, to tell you the truth.

5 (Document marked as Ross
6 Exhibit 28 for identification)

7 Q. Exhibit 28 is a photocopy of an e-mail from
8 you to Mr. Tuvell dated September 28, 2012: "Hey,
9 Walt, take a look at this before I send it back.
10 Thanks, Stephanie." You are writing to MetLife
11 regarding Mr. Tuvell's application for long-term
12 disability benefits?

13 A. Correct.

14 Q. Remember before you said you thought you
15 received a phone call from Dr. Rummler?

16 A. Okay.

17 Q. Dr. Rummler was with MetLife, wasn't he?

18 A. Okay.

19 Q. Do you know?

20 A. I believe so. It was in regards to the
21 long-term disability, yes.

22 Q. So by this time, September of 2012, MetLife
23 has denied long-term disability, and Mr. Tuvell is
24 appealing the denial, does that refresh your

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 recollection?

2 A. Yes.

3 Q. And you completed a statement for MetLife
4 to support his claim of disability?

5 A. Correct.

6 Q. Why did you send it to Mr. Tuvell to review
7 before you sent it to MetLife?

8 A. Because given the fact that Mr. Tuvell had
9 given me permission to reveal any and all of his
10 expression of information under confidentiality and
11 had waived all of that, I felt like it was helpful
12 for him to understand the actual information that I
13 would be presenting to an organization outside of
14 the room of our circumstances, and I felt that it
15 was better for him to actually see that from me, the
16 person who was constructing it, based on our
17 therapeutic experience.

18 Q. And then you sent it to MetLife?

19 A. I did.

20 Q. You wrote on Page 2 in the bottom of the
21 top paragraph, "The symptoms would return if
22 Mr. Tuvell had to drive near the facility, and he
23 would have to pull over and manage intense anxiety
24 symptoms and emotional overwhelm"; is that what you

Stephanie Ross, L.I.C.S.W. - April 11, 2014

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1 wrote?

2 A. It is what I wrote.

3 Q. And you believed that to be true?

4 A. I believe that I knew of the situation in
5 which that occurred and that I was expressing that
6 that was one of the elements that contributed to my
7 perception in his inability to return to that
8 environment.

9 Q. So that even without seeing Mr. Feldman,
10 just being in the vicinity of the facility, he would
11 suffer this tremendous anxiety and distress?

12 MR. MANTELL: Objection.

13 A. At the time that I was told about that
14 incident, yes.

15 Q. And this was January --

16 A. That's not when it occurred. It was as
17 part of my summary. It was contributing to my
18 summary of circumstances as to why I felt it was --
19 ~~I was willing to consider asking for him to be able~~
20 to have long-term disability.

21 Q. When you wrote this on September 28th, did
22 you know that Mr. Tuvell was re-employed?

23 A. At this time did I know?

24 Q. Yes.

1 COMMONWEALTH OF MASSACHUSETTS)
2 SUFFOLK, SS.)

3 I, Ken A. DiFraia, RPR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 11th day of
6 April, 2014, at 10:00 a.m., the person hereinbefore
7 named, who was by me duly sworn to testify to the
8 truth and nothing but the truth of her knowledge
9 touching and concerning the matters in controversy
10 in this cause; that she was thereupon examined upon
11 her oath, and her examination reduced to typewriting
12 under my direction; and that the deposition is a
13 true record of the testimony given by the witness.

14 I further certify that I am neither attorney or
15 counsel for, nor related to or employed by, any
16 attorney or counsel employed by the parties hereto
17 or financially interested in the action.

18 In witness whereof, I have hereunto set my hand
19 and affixed my notarial seal this 24th day of April,
20 2014.

21 *Ken A. DiFraia*
22

23 Notary Public
24 Commission expires 3/11/2016

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----x
WALTER TUVELL, :
 Plaintiff, :
 : vs. : C.A. No.
 : 13-CV-11292-DJC
INTERNATIONAL BUSINESS :
MACHINES, INC., :
 Defendant. :
-----x

DEPOSITION OF LINDA L. KING, a witness called on behalf of the Defendant, taken pursuant to the Federal Rules of Civil Procedure, before Ken A. DiFraia, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Jackson Lewis P.C., 75 Park Plaza, Boston, Massachusetts, on Friday, May 9, 2014, commencing at 10:10 a.m.

PRESENT:

Rodgers, Powers & Schwartz LLP
(by Robert S. Mantell, Esq.)
18 Tremont Street, Suite 500,
Boston, MA 02108,
RMantell@TheEmploymentLawyers.com
617.742.7010, for the Plaintiff.

Pyle Rome Ehrenberg PC
(by Patrick N. Bryant, Esq.)
18 Tremont Street, Suite 500,
Boston, MA 02108,
pbryant@pylerome.com
617.367.7200, for the Deponent.

(Continued on Next Page)

Linda L. King - May 9, 2014

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1 Q. You were driving?

2 A. Uh-huh.

3 Q. Is that yes?

4 A. Two of the times, yes.

5 Q. Would you call your husband's anger an
6 over-reaction?

7 A. Oh, yes.

8 Q. Isn't that behavior that you have observed
9 in your husband for a long period of time,
10 over-reaction?

11 A. Not to that extent.

12 Q. To a lesser extent, have you seen your
13 husband's over-reaction long before 2011?

14 A. Occasionally.

15 (Document marked as King

16 Exhibit 10 for identification)

17 Q. Exhibit 10 is a document from Walter Tuvell
18 dated April 21, 1997 to Meg MacGougan, Margaret
19 Johnson, David Thompson in which he says he's
20 written "a narrative form from my perspective of
21 what happened to me included below." It's titled
22 "Sleepless in Boston, How Microsoft Raped my Family
23 While Recruiting Me, January 24 to April 20, 1997."
24 Have you seen this previously?

Linda L. King - May 9, 2014

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1 Q. Have they asked you about why Mr. Tuvell is
2 doing this?

3 A. Is what?

4 Q. Why your husband is bringing this lawsuit.
5 Have they asked you that?

6 A. No, they have not asked me that.

7 (Document marked as King
8 Exhibit 17 for identification)

9 Q. Exhibit 17 is a photocopy of the cover
10 letter from Mr. Bryant to me, attached to which is a
11 privilege log that was provided to us, and we will
12 be taking issue with some of these.

13 MS. ACKERSTEIN: And so I will be speaking
14 with you, Mr. Bryant, about that.

15 (Document marked as King
16 Exhibit 18 for identification)

17 Q. Exhibit 18 is a photocopy of an e-mail from
18 Walt Tuvell to Bob Cringley, or bob@cringley.com.
19 Have you seen this previously?

20 A. (Examines document) Not that I recall.

21 (Document marked as King
22 Exhibit 19 for identification)

23 Q. Exhibit 19 is a photocopy of an e-mail from
24 Mr. Tuvell to Patricia Barnes, "Where I got PTSD."

Linda L. King - May 9, 2014

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1 Have you seen this previously?

2 A. No, I don't recall seeing this.

3 Q. Can you take a look at at least the first
4 page.

5 A. (Examines document) Yes.

6 Q. Mr. Tuvell wrote to Patricia Barnes about
7 his suit against IBM in June of 2013. Do you know
8 Patricia Barnes?

9 A. I have no idea.

10 Q. He wrote in the first paragraph, "Linda has
11 felt terribly guilty ever since, no matter how much
12 we console each other it was all MS's fault, not
13 ours." MS is Microsoft. Have you felt terribly
14 guilty since Microsoft?

15 A. Not for many years.

16 Q. He went on to say, "So she has her own PTSD
17 over it." Do you have PTSD over the Microsoft
18 issue?

19 ~~A. I have never been diagnosed with it.~~

20 Q. Do you think you have PTSD over the
21 withdrawal of the job offer?

22 A. I don't think I can competently answer
23 that.

24 Q. Have you ever done any research on PTSD?

1 COMMONWEALTH OF MASSACHUSETTS)
2 SUFFOLK, SS.)

3 I, Ken A. DiFraia, RPR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 9th day of
6 May, 2014, at 10:10 a.m., the person hereinbefore
7 named, who was by me duly sworn to testify to the
8 truth and nothing but the truth of her knowledge
9 touching and concerning the matters in controversy
10 in this cause; that she was thereupon examined upon
11 her oath, and her examination reduced to typewriting
12 under my direction; and that the deposition is a
13 true record of the testimony given by the witness.

14 I further certify that I am neither attorney or
15 counsel for, nor related to or employed by, any
16 attorney or counsel employed by the parties hereto
17 or financially interested in the action.

18 In witness whereof, I have hereunto set my hand
19 and affixed my notarial seal this 23rd day of May,
20 2014.

21 *Ken A. DiFraia*

22 Notary Public

23 Commission expires 3/11/2016
24

Volume I
Pages 1 to 206
Exhibits 1 to 23

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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-----X
WALTER TUVELL,           :
                          :
    Plaintiff,           :
                          :
    vs.                   :
INTERNATIONAL BUSINESS   :
MACHINES, INC.,         :
    Defendant.           :
                          :
-----X

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Civil Action No.
13-cv-11292-DJC

ORAL DEPOSITION OF LISA DUE

On the 20TH day of May, 2014, between the hours of 10:01 a.m. and 4:18 p.m., in the offices of Jackson Lewis, P.C., One North Broadway, 12th Floor, White Plains, New York, before me, TARA FERGUSON MIRRA, a Court Reporter and Notary Public of the State of New York, appeared LISA DUE, who, being by me first duly sworn, gave an oral deposition at the instance of the Plaintiff in said cause, pursuant to the Federal Rules of Civil Procedure.

PRESENT:

(By telephonic means)
Rodgers, Powers & Schwartz LLP
(By Robert S. Mantell, Esq.)
18 Tremont Street, Suite 500
Boston, Massachusetts 02108
617.742.7010
RMantell@TheEmploymentLawyers.com
for the Plaintiff.

(CONTINUED)

Lisa Due - May 20, 2014

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1 going to crack open the package and get out

2 Exhibit 1. Correct?

3 MR. MANTELL: Exhibit 1.

4 MR. PORTER: Okay. Hold on one second.

5 So I want you to read the exhibit and let
6 us know when you've finished.

7 She's looking at the exhibit now.

8 THE WITNESS: Okay.

9 BY MR. MANTELL:

10 Q. Do you recognize that document?

11 A. I do.

12 Q. What is that document?

13 A. This document is an email I received from
14 Diane Adams.

15 Q. Is it fair to say that you received this
16 document on or about June 16th, 2011?

17 A. Yes.

18 Q. Is it fair to say that you reviewed the
19 entire document on or about June 16th, 2011?

20 A. Yes.

21 Q. Now, going to the third page at the top.
22 This is part of an email sent by Mr. Tuvell to Ms.
23 Adams and Ms. McCabe; correct?

24

Lisa Due - May 20, 2014

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1 (A discussion was held off the record.)

2

3 BY MR. MANTELL:

4 Q. Going to the second page of Exhibit 1, and
5 going to the bottom, that's an email from Mr. Tuvell
6 to Ms. Adams and Ms. McCabe; correct?

7 A. Yes.

8 Q. And going to the third page, at the top, it
9 says, "There's just one problem. I believe it is
10 infeasible for me to work for Dan." Do you see
11 where it says that?

12 A. Yes.

13 Q. And you read that on or about June 16th?

14 A. Yes.

15 Q. And you read the sentence underneath that
16 Mr. Tuvell has PTSD?

17 MR. PORTER: Are you just paraphrasing?

18 MR. MANTELL: Yes.

19 MR. PORTER: Okay. I object, but

20 A. I -- I see a reference to that.

21 Q. You understood as of June 16th, 2011, that
22 Mr. Tuvell had PTSD; correct?

23 MR. PORTER: Objection.

24 A. No.

Lisa Due - May 20, 2014

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1 Q. No?

2 A. No.

3 Q. Okay. What was your understanding of Mr.
4 Tuvell's medical condition as of June 16th, 2011?

5 A. I did not know what that was.

6 Q. Did you suspect any medical condition on
7 his part?

8 A. Not at that time.

9 Q. All right. Underneath, Mr. -- in the same
10 paragraph, Mr. Tuvell wrote, "I have no doubt in my
11 mind that I will be constantly bombarded by him with
12 harassment and retaliation ultimately being
13 blackballed to the point where I'll be forced to
14 leave due to hostile environment."

15 Do you see where it says that?

16 A. Yes.

17 Q. And you read that on June 16th?

18 A. On or about.

19 Q. So was it your understanding as of
20 June 16th that Mr. Tuvell was complaining of
21 harassment retaliation?

22 A. Yes.

23 Q. Now, going to page 2 of Exhibit 1, the
24 middle email is an email from Ms. Adams to you dated

Doris O. Wong Associates, Inc.

Lisa Due - May 20, 2014

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1 June 16th, 2011; correct?

2 A. Yes.

3 Q. And you received that email on or about
4 June 16th, 2011?

5 A. Yes.

6 Q. And who is Diane Adams?

7 A. She was the HR transition person handling
8 Netezza.

9 Q. Okay. She wrote to you, "Lisa, FYI, and
10 unless you think otherwise, I am not planning to
11 respond to Walt. I don't think we should be making
12 any changes before this matter is looked into.
13 Agree?"

14 Did I read that correctly?

15 A. Yes.

16 Q. What changes was Ms. Adams referring to?

17 MR. PORTER: Objection to the form.

18 A. I don't know.

19 Q. Was she referring to the possibility of
20 moving Mr. Tuvell away from Mr. Feldman?

21 MR. PORTER: Objection.

22 A. I don't know.

23 Q. Did you inquire as to what she was
24 referring to there?

Lisa Duc - May 20, 2014

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1 A. No.

2 Q. Now, going to page 1 of Exhibit 1, on the
3 bottom, it appears to be an email from you to Ms.
4 Adams; is that correct?

5 A. Yes.

6 Q. Did you send this email on or about
7 June 16th, 2011?

8 A. Yes.

9 Q. And you wrote in your second paragraph, "I
10 agree with you that it is too premature at this
11 stage for a change." Do you see where you wrote
12 that?

13 A. Yes.

14 Q. What changes were you referring to in your
15 email?

16 A. I don't recall.

17 Q. Were you referring to the possibility of
18 moving Mr. Tuvell away from Mr. Feldman?

19 ~~MR. PORTER: Objection.~~

20 A. I don't recall.

21 Q. Were you referring to the possibility of
22 moving Mr. Feldman away from Mr. Tuvell?

23 MR. PORTER: Objection.

24 A. I don't recall.

Lisa Due - May 20, 2014

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1 Q. Did you do so to Mr. Metzger and Ms. Adams
2 at the same time or at different times?

3 A. I don't recall.

4 Q. What did you tell Ms. Adams?

5 A. I explained that the interviews I had
6 conducted did not support or substantiate the
7 allegations raised by Mr. Tuvell.

8 Q. Can you recall anything else that you told
9 Ms. Adams?

10 A. No.

11 Q. What did you tell Mr. Metzger?

12 A. About the same thing that I told Ms.
13 Adams.

14 Q. Can you recall anything else that you told
15 Mr. Metzger concerning your findings concerning the
16 investigation that you undertook in June 2011?

17 A. Not that I recall. Excuse me.

18 Q. And what did you tell Mr. Feldman
19 concerning your conclusion or findings involved in
20 the investigation of June 2011?

21 A. That my investigation was completed, a
22 higher level of summary to Mr. Feldman, as I recall,
23 than was provided to Ms. Adams and Mr. Metzger.

24 Q. What does that mean, "a higher level"?

Lisa Due - May 20, 2014

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1 A. Not as detailed.

2 Q. So it's your testimony that your other
3 reports to Ms. Adams and Mr. Metzger were more
4 detailed?

5 MR. PORTER: When you say "reports" --

6 A. It is a verbal briefing, if you will.

7 Q. Yes.

8 A. Yes, they were more detailed.

9 Q. How long were those verbal briefings?

10 A. I don't recall.

11 Q. What is an open door, to your
12 understanding?

13 A. An open door is a -- is raised when an
14 employee has a concern and there is factual evidence
15 to undergo a full investigation. Interviews are
16 conducted, a report is written and reviewed, and a
17 verbal closeout is provided to the employee.

18 Q. How was this investigation separate or
19 different from an open door investigation?

20 MR. PORTER: Objection. You can answer.

21 A. The way this case came into the integrated
22 services team ID was not from the employee. It was
23 from Ms. Adams.

24 Q. So why was -- at some point, Mr. Tuvell was

Lisa Due - May 20, 2014

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1 A. I don't recall that.

2 Q. But you recall the -- receiving the first
3 three sentences?

4 A. Yes.

5 Q. Okay. Did you report Mr. Tuvell's concerns
6 to anyone?

7 A. No.

8 Q. And why not?

9 A. Because I was still conducting my
10 investigation.

11 Q. In light of Mr. Tuvell's statements in June
12 28th, 2011, did you do anything in order to separate
13 the two?

14 A. Not that I recall.

15 Q. Now, who did you interview in your
16 investigation of Mr. Tuvell in June 2011?

17 A. Ms. Adams, Mr. Tuvell, Mr. Feldman, Mr.
18 Knabe, Mr. Lubars, are the ones I can recall.

19 Q. Did you interview Qua Men Chen [ph.]

20 A. No.

21 Q. Did you interview Jeffrey Keller?

22 A. No.

23 Q. Did you interview Gerald Richard Title
24 [ph.]?

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1 Q. Okay. That -- and he admitted that he
2 raised his voice?

3 A. Yes, both he and Mr. Tuvell.

4 Q. And was Mr. -- did he consider Mr. Tuvell
5 to be yelling?

6 A. Not considered yelling, but --

7 Q. Okay. So is it fair to say that Mr. Knabe
8 reported to you that Mr. Tuvell was not yelling at
9 him?

10 A. Correct, neither were.

11 Q. Did you ever make any finding as to whether
12 Mr. Tuvell yelled at Mr. Knabe?

13 MR. PORTER: Objection.

14 A. I know words were exchanged. Yelling is
15 subjective. But there were voices raised, according
16 to Mr. Lubars, who was there.

17 Q. Well, did you conclude that Mr. Knabe
18 raised his voice at Mr. Tuvell?

19 A. I don't remember what Mr. Lubars said.
20 From Mr. Knabe, he's saying they both raised their
21 voices. That's what he told me.

22 Q. And I'm asking whether you concluded that
23 Mr. Knabe raised his voice to Mr. Tuvell.

24 A. Yes.

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1 Q. And did you do anything with respect to
2 disciplining Mr. Knabe?

3 A. No.

4 Q. Did you report to anyone that you concluded
5 that Mr. Knabe raised his voice at Mr. Tuvell?

6 MR. PORTER: Objection.

7 A. I don't recall.

8 Q. Can you go to Exhibit 21, please.

9 MR. PORTER: Just a minute. She has it.
10 She's now going to review it.

11 Rob, off the record for a second. I'm
12 just asking the court reporter.

13

14 (A discussion was held off the record.)

15

16 THE WITNESS: Okay.

17 BY MR. MANTELL:

18 Q. Do you recognize Exhibit 21?

19 A. Yes.

20 Q. What is this document?

21 A. A continuation of my case interview notes.

22 Q. Did you see on page 1 that part of it has
23 been redacted?

24 A. Yes.

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1 MR. PORTER: Objection.

2 A. Yes.

3 Q. Now, what had been Mr. Mandel's role in
4 your investigation, up to this point?

5 A. None.

6 Q. So how -- why would he be telling you to
7 tell Mr. Tuvell that you had not found any
8 mistreatment?

9 A. It was me briefing Mr. Mandel and letting
10 him know that I expected an escalation from Mr.
11 Tuvell.

12 Q. Okay. Did you, at this point, show
13 Mr. Mandel your work with respect to your
14 investigation?

15 A. No.

16 Q. Did Mr. Mandel approve your conclusions in
17 any way?

18 A. No.

19 Q. Okay. Now, underneath, it says, "No need
20 to place him in another role." Is this something
21 you said or Mr. Mandel?

22 A. Mr. Mandel and I discussed that.

23 Q. You discussed placing him in another role?

24 A. No, the fact that there was no need based

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1 on the -- the findings.

2 Q. Okay. Were there any specific options for
3 placing Mr. Tuvell in another role that were
4 discussed?

5 A. To place him in one, no. He could --

6 Q. Okay.

7 A. He could apply for one, but not to place
8 him in one. Again, based on my findings.

9 Q. And then it says "like a tantrum for a two
10 year old, they will learn to do it again if you give
11 in to what they need." Do you see where it says
12 that?

13 A. Yes.

14 Q. Does that reflect Mr. Mandel's statement or
15 yours?

16 A. Mr. Mandel's.

17 Q. And so is he saying that "they," Mr. --
18 that both -- that both Mr. Feldman and Mr. Tuvell
19 were -- were like two year olds?

20 A. I don't know to whom he was referring.

21 Q. Okay. Did Mr. Mandel, during this meeting
22 with you on June 27th, criticize Mr. Feldman in any
23 way?

24 MR. PORTER: Objection.

Doris O. Wong Associates, Inc.

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C E R T I F I C A T I O N

STATE OF NEW YORK)
) ss.
COUNTY OF WESTCHESTER)

I, TARA FERGUSON MIRRA, Court Reporter
and Notary Public within and for the County of
Westchester, State of New York, do hereby certify:

That I reported the proceedings that
are hereinbefore set forth, and that such transcript
is a true and accurate record of said proceedings.

AND, I further certify that I am not
related to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand.

TARA FERGUSON MIRRA
Court Reporter