

Addendum III



November 30, 2012

Document History

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Related Documents

Author	Date	Title
Walter Tuvell	August 18, 2011 (version 1.0)	<i>Claims Of Corporate And Legal Misconduct</i> , in two Parts: <i>Part I (Acts Of Fritz Knabe); Part II (Acts of Dan Feldman, HR, Legal)</i> — Referenced as “Old Complaint”
Walter Tuvell	August 28, 2011 (Version 1.0)	<i>Old Complaint, Addendum I</i>
Walter Tuvell	September 4, 2011 (Version 1.0)	<i>Old Complaint, Addendum II</i>
Walter Tuvell	September 22, 2011 (Version 1.0)	<i>Old Complaint, Addendum III</i>
Walter Tuvell	November 3, 2011 (Version 1.0)	<i>Old Complaint, Addendum IV</i>
Walter Tuvell	January 22, 2012 (Version 1.1)	<i>Claims Of Interference, And Demand For Transfer</i> — Referenced as “New Complaint”
Walter Tuvell	March 2, 2012 (Version 1.0)	<i>Old Complaint, Addendum V</i>
Walter Tuvell	March 2, 2012 (Version 1.0)	<i>New Complaint, Addendum I</i>
Walter Tuvell	March 9, 2012 (Version 1.0)	<i>New Complaint, Addendum II</i>
MetLife	April 17, 2012	<i>Initial Denial of LTD</i>
Walter Tuvell	August 22, 2012	<i>Appeal from Denial of LTD</i>
MetLife	October 31, 2012	<i>Final Denial of LTD</i>
MCAD Charge	March 12, 2102	<i>Robert Mantell</i>
MCAD Position Statement (to Charge)	May 15, 2012	<i>Joan Ackerstein</i>
MCAD Rebuttal (to Position Statement)	June 22, 2012	<i>Robert Mantell</i>

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26 Executive Summary — Addendum III

This document is Addendum III to my New Complaint (entitled *Claims of Interference, and Demand for Transfer*) plus Addenda I-II.

Hereinafter, the unqualified term “New Complaint” includes the original New Complaint, plus Addenda I-III, unless otherwise specified.

Note: The years in which events occurred (2011–2012) are largely self-explanatory, hence are omitted unless necessary to avoid confusion/ambiguity.

26.1 List Of Particulars

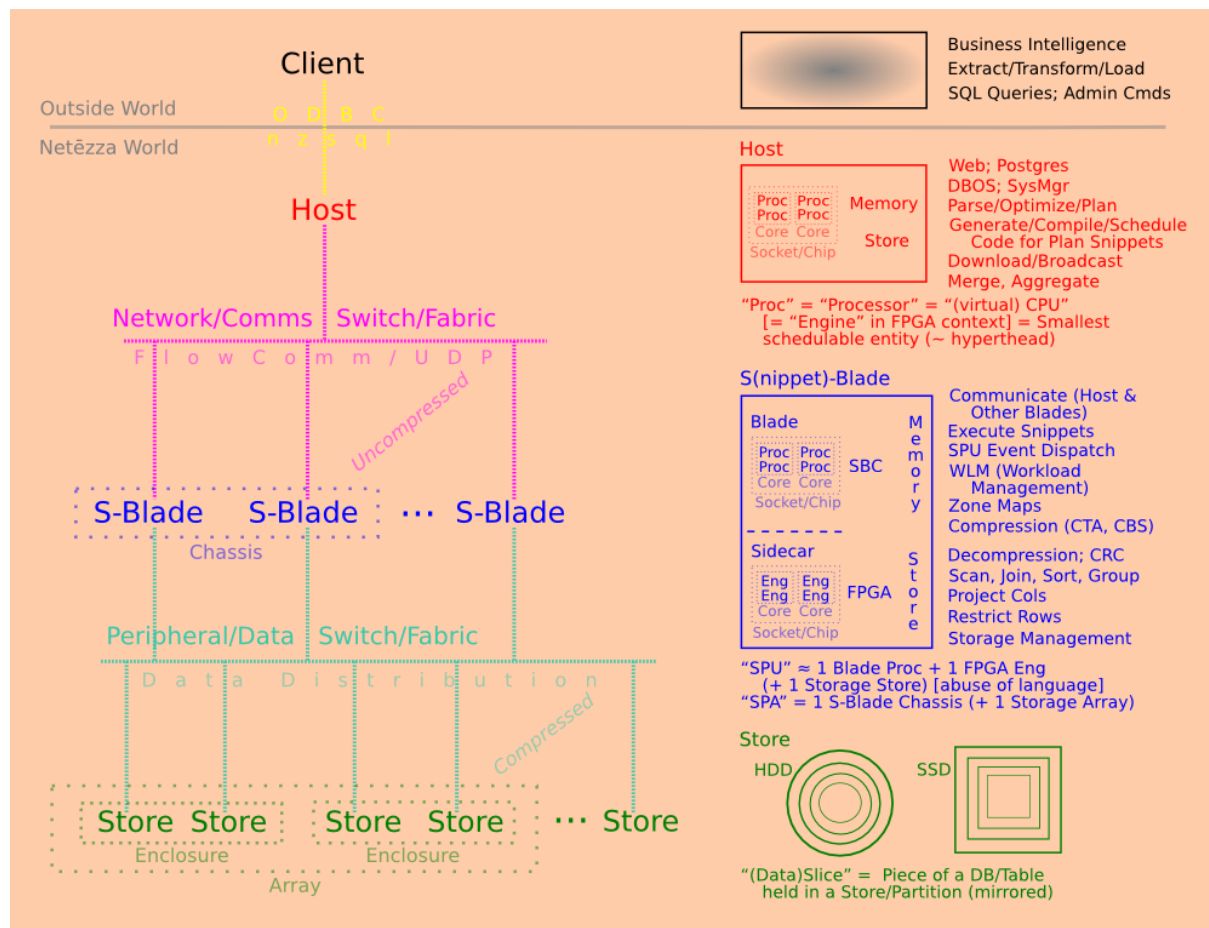
- Russell Mandel issued yet another illegal threat concerning my protected communication of opposition to IBM’s illegal/discriminatory behavior (in fact, a *repeat* of an earlier illegal threat of his/IBM’s).
- Diane Adams’ several acts of defamation, (discrimination-)retaliation, IIED/bullying, etc.
- Wrongful termination (termination under “constructive” circumstances, and upon falsely claimed non-contractual basis).
- Dan Feldman’s acts of (discrimination-)retaliation and IIED/harassment, by sending a computer forensic expert to pick up my laptop, and demanding that I leave the data/information on the laptop intact, with passwords supplied.²⁸

27 Typos, Etc.

- Old Complaint, Part I, p. 11, 3rd paragraph, 3rd sentence: delete first occurrence of the word “previously”.
- Old Complaint, Part I, p. 13, mid, 1st bullet item: ‘write”a’ should have a space in it; and “could” should read “to”.
- Old Complaint, Part I, p. 13, bot: ‘(iii)”native’ should have a space in it.
- Old Complaint, Part I, p. 14, top (including fn. 25): “and others”. At the time I wrote “and others”, I had a nagging feeling there was another achievement I was unable to recall under the speed pressure of the moment, but I didn’t have time to search for it. I later recalled it, but haven’t bothered documenting it, until now. This is my *NPS In A Nutshell* diagram. This was a self-motivated project to produce a better graphical diagram of the high-level architecture of NPS (Netezza Performance Server). Such diagrams are standard in the computer industry, but the NPS architecture diagrams that had existed heretofore were designed to illustrate the *physical* layout of an NPS *hardware rack* — which is of course an improper way to depict the *logical* concept of an *architecture*. I gave an early copy of my diagram to

28. This is retaliatory, because it’s disparate treatment, because: (i) other employees aren’t treated this way at the end of employment; (ii) I hadn’t been treated that way previously when I’d turned in old laptops, either at (pre-IBM) Netezza, or at other companies.

consultant Clark French when he came on board, to bring him up-to-speed on the NPS architecture. I also gave a copy of the diagram to Dan, but he expressed little interest in it, so the idea was dropped as a deliverable project (though Dan did list it as an achievement on my Performance Review). Instead, I did all the work on it, and completed it, to my own level of satisfaction, on my own personal time. My final version is reproduced here (it's accurate and informative, and I believe the NPS documentation would profit from adopting it, but the current version suffers from the drawback is that it's not of "professional" quality, because I don't possess the requisite level of skill as a graphical artist):



- Old Complaint, Part I, p . 19, top: "can't locate any other contemporaneous records for this period ... dating might be a little off ... sent him an instant message and email". I was able, later, to locate the following short email chain, recording my request to Fritz for discussion of the Excel graphics incident (note the date was actually Tuesday, May 24, not Monday, May 23 as I'd guessed — so my "dating was a little off", as I thought it might be). There were no further electronic communications following these (Fritz simply stood up and asked me if I wanted to talk, and we went to the nearby conference room to talk). "Sametime" is the instant-messaging system supported by Lotus Notes, used at IBM.

- From: Walter Tuvell
To: Fritz Knabe
Date: 05/24/2011 02:02:09 PM
Subject: Sametime?

Did you get the IM I sent you earlier?

- From: Fritz Knabe
To: Walter Tuvell
Date: 05/24/2011 02:11 PM
Subject: Re: Sametime?

No.

- From: Walter Tuvell
To: Fritz Knabe
Date: 05/24/2011 02:13:18 PM
Subject: Re: Sametime?

Oh, thank you SameTime. Anyway the question was whether I could have a talk with you.

- Old Complaint, Part I, p. 19, mid: “I agree” should read “I agreed”.
- *“Welcome to the ballpark”; “Tomorrow is another day”; “It’s alive”*: In my Old Complaint, Part I, the phrase “It’s alive” was mentioned several times (pp. 103–107, 117), but never explained. It is inextricably intertwined with two other phrases, “Welcome to the ballpark” and “Tomorrow is another day”, all forming a connected sequence of emails, dated at the very end of March, 2011; these latter have been nowhere mentioned yet in my Complaints, because I thought they were irrelevant. Now, however, it seems the story of these three phrases can serve as an excellent “character witness” of the good relations I enjoyed with Fritz and Dan (and the whole Wahoo team), before Fritz and Dan decided to seriously deteriorate the situation, for unknown reasons. Appendix W.²⁹
- *3-Way (sometimes spelled “three-way”) meeting; mind-reading; bullying*: A major bone of contention throughout, which has been emphasized very many times (Old Complaint, Part I, pp. 8, 15, 18, 19, 24, 43, 125; Part II, pp. 8, 19, 36, 38, 46, 74, 127, 128), is that I asked/begged (≥ 6 times) for a 3-way meeting amongst myself, Fritz and Dan, to resolve the Excel graphics incident, but I was always refused, for unknown reasons.³⁰ I have already documented the first time I did so (in an “Out

29. The phrase “It’s Alive” derives from Mel Brooks’ movie *Young Frankenstein* (1974), from which comes the graphic included in my March 31, 2011 email (Appendix W.c). At that time, I also printed out a hardcopy of that graphic and posted it on the whiteboard in the Cambridge Bullpen, where it remained ever after, and was enjoyed by all (especially Fritz) in the spirit of camaraderie (including especially **good-natured humor** [with reference to the “lazy scandal”) in which it was intended: likening Fritz to Gene Wilder’s portrayal of Mary Wollstonecraft Shelley’s Dr. Frankenstein, who was responsible for bringing life to the “monster” (\approx Wahoo prototype).

30. The reasons were “unknown” to me at the time, but in retrospect the reason is now obvious: Both Fritz and Dan knew I didn’t “work in Excel” (Old Complaint, p. 17 and fn. 31). So they had no reason to have a

today” email chain of Thursday, May 19, the very day after the Excel graphics incident itself). Old Complaint, Part I, Appendix C. And incidentally, it was during that email exchange that I also first made comments *in print* about Fritz’s “mind-reading” and “bullying” (though I first did that at the one-on-one Excel meeting Dan, the previous day). But what I’ve recently discovered is that there were two additional emails belonging to that same exchange, that haven’t been included in my Complaints heretofore. I don’t know how they managed to escape inclusion.³¹ But in any case I now recognize them as relevant (as noted in the footnotes here), and I now correct the oversight by including them here:

- From: Daniel Feldman
To: Walter Tuvell
Date: 05/19/2011 07:39 AM
Subject: Re: Out today

ACK. Feel better soon.

- From: Walter Tuvell
To: Daniel Feldman
Date: 05/19/2011 10:30 AM
Subject: Re: Out today

Yeh, I'll do that.

In the meantime, here's a draft of v1.1 of the doc. The only important additions are: (i) new Sec. 7; (ii) additional mini-tutorial material at the beginning of App. A; (iii) new App. E. The graph in App. D has also been regenerated with minor mods, to reflect the new tool.

BTW, the tool only runs on Linux, because every engineer uses that (because NPS does), and even non-engineers have access to it, if only by VM. I could port it to other platforms (I've done so in past), but there seems to be no need. Unless Fritz secretly desires it run it on Mac, but doesn't tell me, instead complaining to you I haven't read his mind.

►Attachment, *PerfScore.pdf*, not included here (irrelevant).◄

- Old Complaint, Part I, p. 24 — At the end of the phone conversation with Dan on Thursday, June 9, I “apologized” to Dan for burdening him with the Fritz yelling incident the day before (saying I was “sorry” for the necessity of getting him involved, though of course I had nothing to truly “apologize” for) — noting that he’d

3-way meeting with me — they *knew* I hadn’t been asked to produce any Excel graphics, because the “impedence mismatch” between myself and Excel meant it would have been *impossible* for me to produce the required graphics in the time allotted (overnight, between 4 PM on May 17 and 11:30 AM on May 18).

31. That was early in my drafting of the Old Complaint. Perhaps at the time, I was trying to keep the length of the document down to a minimum, and I didn’t think they were very important. Or perhaps they were lurking in an email folder on-the-side, and I didn’t notice them.

spent the first three days of that week at Armonk doing Manager Training, and so probably had “higher-level managerial thoughts on his mind” (Old Complaint, Part II, p. 32, bot). Dan responded that no apology from me was in-order, because this Fritz yelling issue was, he said, the “most important thing on my [his] agenda, except for one thing” (he never told me what that “one thing” was). At the time, I thought Dan meant that he was going to resolve the Fritz yelling problem in some proper way; I had no suspicion he’d instead take the improper route of demoting me the next day.

- Old Complaint, Part I, p. 25 — At the demotion meeting on Friday, June 10, a further thing Dan told me was “don’t tell Sujatha about Fritz”. Thus, Dan ordered me not to warn Sujatha about Fritz’s tendencies towards bullying/lying/defamation. Why did he do that? To “cover-up” for Fritz, protecting his illegal behavior; to violate my right to oppose Fritz’s illegal behavior; to prevent my warning Sujatha about the kind of possible actions Fritz might take against her. Of course, it was *illegal* for Dan to tell me not to talk to Sujatha, because complaining to anyone about alleged discrimination is illegal (New Complaint, Addendum 2, p. 13).
- *Multiple operating system environments.* The mention of “Mac” in an earlier bullet-item (p. 8, above) attests to the fact that I and Dan were aware of (and respectful of) Fritz’s use of a MacIntosh laptop (his own personal one, in fact) — just as Dan and Fritz were aware/respectful of my use of an exclusively-Linux laptop — and indeed everyone’s awareness/respectfulness of the issue of “porting” applications/documents amongst operating system environments. This usage of multiple computer environments (Windows, MacIntosh, Unix/Linux) is “standard operating procedure” in today’s computer business, and often leads to good-natured ribbing amongst the “proponents” — and such was indeed the case at Netezza/IBM, just as everywhere else. This phenomenon is jokingly referred to as “Computer Wars”, as memorialized by the following very well-known (in technical circles) Dilbert cartoon:³²



- There exists “tons” of evidence providing irrefutable proof that Dan knew (and so did Fritz) that *I did not “do” Windows/Excel*. This evidence exists in email form, to

32. Copyright © Scott Adams, Dilbert Comic Strip, June 24, 1995. Regarding this very comic strip: I emailed it to Dan (and possibly others). Unfortunately, I cannot locate that email at the present time. It may be stored in the old Netezza Microsoft Exchange Server (as opposed to the new IBM Lotus Notes Domino Server). [I expect that’s where Brian Maly’s “stonewalling” email is, too.]

begin with, though “everyone knew I was a ‘well-known Linux bigot’”, whether they said so in email or not. It would be very tedious to produce such evidence here, so I won’t do that (though I can certainly do so if necessary further down the road). In this place, let just one simple suffice. It’s from an exchange I had with Fritz, mentioning Excel in passing (there was no need to emphasize it, because the “impedance mismatch” I had with Excel was quite well-known):

- From: Walter Tuvell
To: Fritz Knabe
Bcc: Daniel Fieldsman
Date: 02/01/2011 08:50:33 AM
Subject: Info about WahooProto

change “i” to “a”

Both the laptops I was issued at Netezza/IBM had Windows environments pre-configured, but I immediately (within a day or two) replaced them with Linux (Fedora). I had a desktop too, and it also ran Linux (see Old Complaint, Part I, App. A.e-f and Old Complaint, Add. V, Sec. 50.4, p. 54, last bullet-item).

Fritz, attached is the current state of the “spreadsheet model”³³ I’ve been working on. Dan’s flavor of the model (various versions) are also included, in other sheets. We’ve been taking semi-independent shots at this, as a sanity-check to cover all bases, but we’ll be merging to a single model. [I work in OpenOffice, I’ve exported to Excel for you, hope it works.³⁴]

I couldn’t check, because I didn’t have a copy of Excel.

You’ve seen this before, but now I’d like to ask you if you could please help by supplying the info for the WahooProto column? Of course, the concept of “WahooProto” is fluid, and will vary over time. That’s fine, and if you have a story of how you see WahooProto evolving, that would be very welcome too.

As you know, the ultimate goal is to fill in all the blanks on the spreadsheet, and come up with a predictive theory. It’s further my hope you’ll find this effort interesting, and you’re very invited to join the fray, in any way you’d care to.


Additionally, I’m attaching a high-level architectural sketch of what the Netezza system looks like,³⁵ including buzzwords and where they fit in. Probably still some bugs in it, and certainly still needs some beautification, but don’t we all? This is something I’ve found missing from the training materials I’ve see to date. I was particularly struck by John Metzger’s recent anecdote about his meeting with ~10 IBMers, who were smart (as he put it), but who nevertheless thought Netezza was just a layer of software that could be sprinkled over any DBMS. That speaks to the need for a visualization such as this. I’d be very glad for your review of that too, of course.

Thanks in advance!


- Walt

dele. “)”

- 33· The “spreadsheet model” mentioned here was first mentioned at Old Complaint, Part I, p. 14, top). This was a minor project initiated and maintained by Dan, in which I had only minimal involvement. The spreadsheet technology Dan and Fritz used was Excel (and the name of Dan’s Excel document was “Configuration Sanity Check.xlsx”), but I worked only in OpenOffice Calc. And they knew it.
- 34· The “hope it works” refers to the fact that the file formats used by Excel And OpenOffice Calc are only partially compatible. In particular, graphics used by these two spreadsheet programs are problematic (further “putting the lie” to Fritz’s false claim that he asked me to produce “Excel graphics”).
- 35· This refers to (an earlier version of) the architectural sketch included above, at p. 6.

- Old Complaint, Part II, p. 21, mid: “realizing I need” should read “realizing I needed”.
- Old Complaint, Part II, p. 23, fn. 88: “email” should read “email”.
- Old Complaint, Addendum I, p. 7, mid: “involving two where” should read “involving two instances where”.
- New Complaint, p. 6: “Thuursday” should read “Thursday”.
- New Complaint, p. 7, bot: “I’d work on” should read “I’d worked on”.
- New Complaint, p. 8, top: “luck” should read “lucky”.
- New Complaint, p. 9, top: “liberal-art” should read “liberal-arts”.
- New Complaint, Addendum I, p. 5, fn. 11: “anway” should read “anyway”.
- New Complaint, Addendum I, p. 5, end of first paragraph: Should end with a close-parenthesis. 
- New Complaint, Addendum I, p. 10, second paragraph: “consist of” should read “consist”.
- New Complaint, Addendum I, p. 12, second paragraph: “what what” should read “what”.
- New Complaint, Addendum II: The footers should say “Addendum II” instead of “Addendum V”.
- New Complaint, Addendum II: The Related Documents section should have included Old Complaint, Addendum V (as in the Related Documents section of the instant document).
- In New Complaint, Addendum II, I neglected to mention that in early March I discovered (by viewing John Metzger’s entry in IBM’s internal employee database) the Wahoo team members I’d worked with had been transferred under John Metzger (no doubt temporarily, until a more permanent position for them could be found), and that Fritz was no longer at IBM. I wasn’t surprised: Wahoo was a failure, and Fritz, as the architect/champion/leader of Wahoo, deservedly shouldered the blame. That’s why I sent Fritz a copy of my New Complaint, Addendum II separately, at his Princeton email address (New Complaint, Addendum II, p. 8, email dated 03/03/2012 09:03 PM).
- The notation “Subject-line omitted”, at the bottom of New Complaint, Addendum II, p. 8, should read “Subject-line omitted in original”.
- I’ve discovered an actual (minor/insubstantial) “bug” (error) in my Complaints (the only one, insofar as I am currently aware): I wrote two (slightly) inconsistent versions of the Hennessy-Patterson exchange between Dan and myself: at (i) Old Complaint, Part II, Appendix M, p. 37; and at (ii) Old Complaint, Addendum V, Sec. 60.3, p. 53. The issue is, who mentioned the “fair-use exemption”, Dan or me? I wrote account (ii) independently of account (i), because I was unaware that account (i) at the time I wrote account (ii). And, my “present recollection” (both at the time of writing account (ii), and later at the time of discovery of the inconsistency) on this

unfortunately, it seems I didn't save a copy or screenshot of this



point was/is hazy. To resolve the inconsistency, I must now rely on the principle of “past recollection recorded”, and affirm that the earlier account, (i), is the more reliable/correct one: it was Dan who mentioned “fair-use exemption”.

- *Regarding my correction of Netezza’s “muddle-headed nonsense” (Old Complaint, Part I, p. 13, second bullet item) prior to my arrival:* Recall that the “muddle-headed nonsense” involved was the question of the right “single-number-summary figure-of-merit” to be used for performance comparison purposes (Old Complaint, Part II, p. 76, top; Old Complaint, Addendum V, Sec. 60.2, pp. 52–52). Prior to my arrival, said single-number-summary had been reported as either the “arithmetic mean” and/or the “geometric mean” of elapsed-times. This was indeed “muddle-headed”, according to the standard authorities in the field of performance engineering (Hennessy & Patterson; see Old Complaint, Addendum V, footnotes 211 and 212, p. 53). But what made it *extraordinarily* muddle-headed was that when I asked Dan and members of his performance group their *reasons* for measuring single-number-summary this way, they said: “We don’t know, but they’re equivalent, though we like geometric-mean better than arithmetic-mean, because that shows newer versions of NPS are ‘even faster’ than older versions”!³⁶ My contribution was to recognize (in accord with Hennessy & Patterson) that the right single-number-summary figure-of-merit was the geometric-mean of elapsed-time-ratios (gmETR). What I want to point out in this place is that, even after Dan has drummed me out of Netezza/IBM, Dan himself *continued to use* my correct gmETR, as evidenced by his email introducing his “public embarrassment” (Old Complaint, Addendum I, Appendix KK, p. 60, top). [The “embarrassing” part of that email had nothing to do with the (correct) usage of gmETR, of course.]

28 Mandel’s Final Threat

I filed my New Complaint, Addendum II on Friday, March 9 (and separately sent a copy to Fritz). Appendix X.

Naturally, Russell Mandel couldn’t pass up the opportunity to issue yet another illegal threat: threatening me for telling other people about (and soliciting their aid/resistance concerning) IBM’s illegal practices.³⁷ Appendix X, email dated 03/13/2012 10:29 AM.

I didn’t respond to Mandel (for fear that he/IBM would use the slightest provocation as “reason” to terminate me). Mandel’s email was the last communication I received from Mandel. (I did CC Mandel on a few more emails to him, see below, but they were unrelated to his 03/13/2012 10:29 AM email.)

36· It is a fact that the geometric-mean is always smaller than (or equal to) the arithmetic-mean. This accounts for both (i) the perceived “equivalence”, and (ii) the perceived “even faster”. However, this yields only qualitative observations (i) and (ii) — they lack the quantitative character required of a professional-level performance analyst. That’s why Dan’s (and his group’s) use of arithmetic-mean and geometric-mean (of elapsed-times) was “muddle-headed nonsense”. What made their muddle-headedness “extraordinary” is that they *weren’t even aware* of this arithmetic/geometric-mean inequality.

37· This threat was, in fact, a *repeat* of his earlier threat at New Complaint, Addendum II, Appendix U, p. 8, email dated 2012-03-06 11:15 AM, numbered items #3–4.

29 MetLife: Denial Of LTD

The MetLife LTD process was a rather long-drawn-out, frustrating, affair. But rather than discuss it in date-based chunks spanning several sections of this document, it is discussed here, all in one chunk, in the present section (which therefore overlaps temporally with some of the other sections covered in this document). We just give a general outline of events here, though, because to go into too much detail would disrupt the flow of this document too much. The main documents exchanged during the MetLife LTD process are not included here, but rather they're published separately and just referred-to (see Related Documents section, above).

As mentioned at Old Complaint, Addendum V, Section 62, p. 55, my last day on STD occurred on Tuesday, January 24. So, as of Wednesday, January 25, I was on "unpaid leave" status (see Dan's letters of January 23-24, New Complaint, Addendum I, Appendix R, p. 19), earning \$0.00 in salary/benefits, while seeking LTD benefits from MetLife.

As mentioned at New Complaint, Addendum I, top of p. 5, I filed the paperwork for LTD with MetLife on Tuesday, February 7.

On Tuesday, April 17, MetLife sent me a letter, denying my application for LTD benefits, for "reasons" stated. (See Related documents section.) In that denial letter, the process for appeal was outlined. I determined I would appeal (because I thought, at that point, that MetLife's reasons for denial were erroneous, and I was totally committed to seeing everything through to its conclusion).

On Wednesday, April 25, Diane Adams wrote to me, informing me (similar to Dan's letters of January 23-24, New Complaint, Addendum I, Appendix R, p. 19) that my unpaid leave would be extended while I appealed the MetLife LTD denial. Appendix Y. I informed MetLife and IBM that I would indeed appeal. Appendix Y.

Previously, I had told MetLife I wanted all our communications to be on-the-record, via email. Yet they (specifically, Tammy Crawford) kept trying to phone me. When I tried to return her phone calls, she was usually unavailable, so I'd leave a voice-mail message, and the cycle would either repeat itself or she'd just never get back to me. This happened several times, perhaps a half-dozen times altogether, some of them the preceding MetLife's denial of LTD benefits on April 17, and it happened again during the week of May 28.

should be "preceding the"

In MetLife's denial letter, they offered to send me additional documentation (the more-or-less complete claims-file), to aid me in my appeal. I requested that additional documentation, on May 5. Appendix Y. After MetLife ignored my request for documentation for more than 4 weeks, I sent a follow-up email on Monday, June 4. MetLife finally responded to me by email on Wednesday, June 6, and I received the packet of documentation the following week (it was postmarked Friday, June 8). Appendix Y.

I filed my MetLife appeal on Wednesday, August 22. (See Related Documents section.)

After a typical long (and justified) delay by MetLife, I received their final denial of my appeal, dated October 31. (See Related Documents section.)

un

29.1 Synopsis Of Disagreement With MetLife

I was extremely puzzled at MetLife's denial of LTD benefits, because I was certain my arguments (especially in my Appeal of August 22) were correct. In summary: (i) IBM insisted, as a "job requirement", that I had to work directly for Dan; (ii) yet it was agreed by all sentient beings that I couldn't do that, due to Dan's psychological abusiveness, aimed directly/knowingly at my PTSD disability; (iii) therefore MetLife should award me LTD benefits.

And, indeed, I am still convinced today that my arguments *are* correct — in the sense that the *MetLife/IBM LTD contract terms, as written and interpreted in "ordinary language"*,³⁸ support my receiving LTD benefits.

However, MetLife argued instead that the controlling authority should be — instead of strict contract law — that of *disability law* (though, MetLife did everything in its power to obfuscate this core of their argument). Namely, disability law speaks, not of "job requirements as imposed by employer", but of "essential job functions as determined by the job itself". And obviously, as agreed by all, I was manifestly capable (i.e., non-disabled) of performing the "essential job functions". So on the basis of this argument, MetLife refused to award me LTD benefits.

All this is detailed fully in the MetLife documents (see Related Documents section), so no more is said about it in this document.

Except to note the following extraordinary fact: My arguments to MetLife in favor of LTD benefits were based upon my understanding of the LTD contract's terminology of "IBM-imposed job requirements" (esp. working directly for Dan) — which were *essentially the same as IBM's arguments about "my complete disability to do the job"*, as articulated in IBM's MCAD Position Statement (see Related Documents). Therefore, MetLife's disability-law-based arguments (which are correct as a matter of disability law, though not, I believe, as a matter of contract law [and IBM cannot rely upon the latter for MCAD purposes]) **very effectively refutes IBM's MCAD Position Statement.**

For reference, here's what the EEOC has to say about this matter of "essential job functions" (which manifestly prove that "working for a specific manager" is *never* an "essential job function"):³⁹

- Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. You should carefully examine each job to determine which functions or tasks are essential to performance. (This is particularly important before taking an employment action such as recruiting, advertising, hiring, promoting or firing).
- Factors to consider in determining if a function is essential include:
 - whether the reason the position exists is to perform that function,
 - the number of other employees available to perform the function or among whom the performance of the function can be distributed, and
 - the degree of expertise or skill required to perform the function.

38· As indeed it *should* have been, based on the principle of *contra proferentem*.

39· EEOC, *The ADA: Your Responsibilities as an Employer*, the section entitled *How Are Essential Functions Determined?* Available at <http://www.eeoc.gov/facts/ada17.html>.

- Your judgment as to which functions are essential, and a written job description prepared before advertising or interviewing for a job will be considered by EEOC as evidence of essential functions. Other kinds of evidence that EEOC will consider include:
 - the actual work experience of present or past employees in the job,
 - the time spent performing a function,
 - the consequences of not requiring that an employee perform a function, and
 - the terms of a collective bargaining agreement.

30

On Thursday, January 26, I received an email out of the blue, from a recruiter (“headhunter”), concerning a new job opportunity, with a very small company in [REDACTED], called [REDACTED].⁴⁰ This was very interesting to me indeed, since IBM had just (by cosmic coincidence, the preceding day, Wednesday, January 25, following the end of my STD benefits) reduced my income to \$0.00 in salary/benefits.

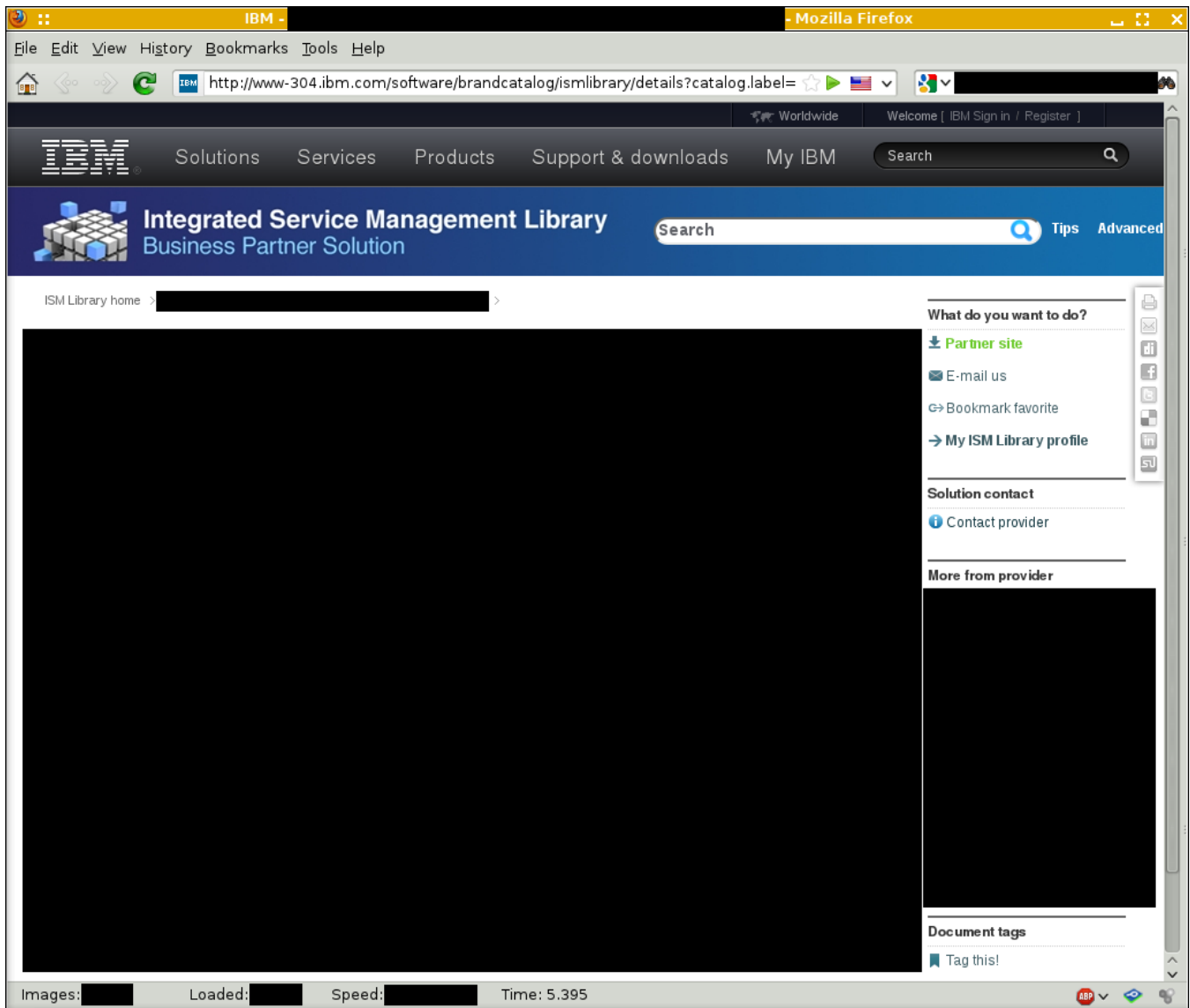
But before pursuing this job lead, I had some due-diligence research to do. How would acceptance of a new job affect my standing with IBM?

I began by reviewing the IBM employment contract and Business Conduct Guidelines, and I learned I was under no obligation to inform IBM about outside employment, only about outside “conflicts of interest”.⁴¹ So it became incumbent upon me study the competitive situation between IBM and [REDACTED].

Admittedly I’m a “tech guy”, not a “business guy”, so my ability to conduct such research was limited, but IBM had put me into desperate straits, so I had to do the best I could with limited resources. Turning to Google, I was able to unearth only a small amount of intelligence about what [REDACTED] did, and its relationship with IBM. The best I was able to make out was that [REDACTED] produced an [REDACTED] solution, focused almost entirely on the [REDACTED] industry (with some previous “legacy” involvement in the [REDACTED] industry and perhaps others, but those markets had been essentially abandoned), which integrated with IBM’s [REDACTED], and that IBM and [REDACTED] actually had a “business partner” relationship (which is the very definition of “non-competition”):

40· Emails relating to [REDACTED] not included here — irrelevant to this Complaint (and no need to expose names of people unnecessarily).

41· Details concerning these contractual obligations appear below.



In other words, [REDACTED] was *exactly the opposite* of a “conflict of interest”. This assuaged my concerns about pursuing a job at [REDACTED]. But in any case, I viewed any new job as a necessary, temporary, stop-gap,⁴² merely supplying me with enough money to earn a livelihood, while I continued to hold out hope that IBM would eventually awake from its deep slumber and “do the right thing” by me. Anyway, IBM’s behavior (refusal and undue delay in conducting proper good-faith investigations, and denial of reasonable accommodation via transfer) had *literally/affirmatively forced* me to seek a new job, simply to survive.

42. This attitude was concocted *in vacuo*, before I knew anything about [REDACTED]. Nothing written here is to be taken as negative towards [REDACTED] in any way, albeit all employment at my level is “at-will” anyway. To the contrary, I was hopeful that [REDACTED] would be (i) compatible with my longer-term requirements, “just in case” (ii) the whole IBM thing fell through in the end — both of which did indeed eventuate.

So I followed up on the recruiter's email, and interviewed with [REDACTED], and received an offer, which I accepted. I started work at my new job on Monday, March 12, 2012.

I didn't tell IBM about the new job, though. (Much more about this appears below.)

31 MCAD⁴³

On Monday, March 12, 2012, 299 days after the Excel Graphics incident (Wednesday, May 18, 2011, which incident was thus included within the 300-day statutory time-limit), Rob Mantell (my lawyer) filed my formal "MCAD Charge". It was very long (as MCAD charges go), but no longer than necessary: 39 pages (including Exhibits), 179 numbered paragraphs, 10 numbered Counts. (See Related Documents section, above.)

On Friday, March 23, Rob informed me that the MCAD's "investigative conference" had been scheduled for Wednesday, July 25.

On Tuesday, April 17, Rob informed me that IBM had retained Joan Ackerstein, of the legal firm Jackson Lewis LLP,⁴⁴ as counsel to represent them.

Ackerstein filed IBM's response ("Position Statement") to the MCAD charge on Tuesday, May 15.

Rob filed my "Rebuttal" to IBM's Position Statement on June 22.

The MCAD investigative conference was held on Wednesday, July 25. It was a major let-down, and waste of time. The presiding investigator was disengaged, and obviously bored. She began by stating that the originally assigned investigator had resigned and moved to Canada, and was thereafter "not present". She gave no indication of having read the pleadings (and perhaps had the wrong set of pleadings on the desk in front of her!), and didn't ask a single question. This convinced me that further proceedings with the MCAD/EEOC would be a major waste of time, so I instructed Rob to remove the case to court, at a pace suitable to the case.⁴⁵

32 Witch-Hunt; Termination

This section describes how IBM finally "figured out" a way to fire me, over a period of 2½ weeks (Monday, April 30 - Thursday, May 17).

It's a torturous journey, absolutely absurd, and literally unimaginable. And it was all triggered by the MCAD filing — hence the whole sequence was obviously (*discrimination*-)*retaliatory*.

Appendix Z.

43· Copies of external process documents (MCAD, court) are not included with the present stream of Old/New Complaint documents. Those formal administrative/legal proceedings are best treated as separate streams of activity and documentation.

44· The canonical "guns for hire", "dedicated to representing management exclusively in employment law" ("All We Do Is WorkSM"). http://en.wikipedia.org/wiki/Jackson_Lewis_LLP.

45· From my point of view there was no hurry, because there were no immanent deadlines to worry about, and I needed time to heal psychologically, and to cement my job at [REDACTED].

32.1 Preliminary Lawyer Probe

To begin with, on Monday, April 30, Rob sent me a note informing me that he'd been called by Joan Ackerstein, regarding my employment status. Appendix Z.a.⁴⁶ Rob told Ackerstein that I was indeed working (though he didn't identify [REDACTED]), but that I was willing to return to IBM if/when that became possible/feasible.

This much seemed to be ordinary "due-diligence lawyer-talk", so it didn't "raise eyebrows" *per se*. But given my experiences with IBM over the past *year (!)*, I immediately became apprehensive that IBM would now attempt to find out where I was working, for the purpose of working back-door channels to get me fired from my new job. So I instructed Rob to *not* reveal *anything* further about my working situation — neither where I *was* working, nor where I *wasn't*.

32.2 Indirect Accusation Via Ackerstein; EMC Fiasco

A couple of days later, on Wednesday, May 2, I got another note from Rob, saying that Ackerstein had asked him whether I was working *for EMC*. Appendix Z.b. I had no idea where IBM/Ackerstein could have gotten such a completely off-the-wall idea.⁴⁷

Rob stonewalled, as we'd agreed. But it was now clear that what had originally been mere legal due-diligence lawyer-talk was indeed devolving into a witch-hunt, just as I'd feared. It was still "just" indirect lawyer-talk at this point, but it was obvious IBM was in agreement with this line of questioning, and it was consistent with my theory of retaliation: begin by eliminating EMC and a few other companies from the list of possibilities, then demand to know exactly where I was working — for the purpose of working back-door channels to get me fired from the new job.

The next salvo in the escalation came the next day, in the form of a formal "*faux* emergency" PDF letter from Ackerstein to Rob, dated Thursday, May 3. Appendix Z.b. It represented a *formal demand* to know whether I was working for EMC, and I was given *less than 24 hours* to respond, under a not-very-implicit threat of firing me, or possibly even filing a lawsuit against me! Again, Rob stonewalled, per agreement.

I recognized Ackerstein's letter as an absurd shot-in-the-dark (what *were* they thinking?), and indeed a consummated act of IIED/bullying, and of (discrimination-)retaliation *per se* (obviously, IBM would not have done this if I hadn't filed my MCAD charge). But, I couldn't formally make claims to that effect, because this was still under the cloaked auspices of lawyer-to-lawyer communications.

32.3 Direct Attack By IBM; FOURTH Open Door C&A

It was at this point that IBM decided to bypass the lawyers, and get directly involved. Doing so raised the stakes immeasurably, because this now opened for IBM new avenues and possibilities for unethical/illegal behavior. IBM didn't disappoint.⁴⁸

46· I am very reluctant to disclose communications protected by attorney/client confidentiality rules, and I do so here only to the extent it's absolutely necessary to narrate the story properly.

47· I had worked for EMC for nearly three years (February 2007 – December 2009) before joining IBM (November, 2011), but otherwise I've had no connection with EMC whatsoever.

48· "Never interrupt your enemy when he is making a mistake." — Napoleon.

Diane Adams began this phase of IBM's attack with a peremptory email on Monday, May 7, accusing me point-blank of working for EMC, and explicitly threatening to fire me therefor. Appendix Z.c. Particularly striking was Adams' citation of IBM's "core values of trust and personal responsibility" — which would have been hilarious (given IBM's aggressively unethical/illegal behavior against me for the past *year*), had it not been so insane.

"Core values" or not, I knew I'd done nothing contrary to any actual *contract* terms (employment contract or BCG), because I'd already studied that (see above). I so informed Adams the next day, Tuesday, May 8, and laid out a list of new charges against her/IBM because of their insane letter: defamation, (discrimination-)retaliation, and harassment/bullying/IIED. I submitted these new charges for my FOURTH Open Door C&A. And, I challenged IBM to set forth any credible evidence it might have that I had been working for EMC (knowing that none such existed). Appendix Z.c.

32.4 LinkedIn Fiasco

Later that evening, Tuesday, May 8, is when IBM finally brought out the "big gun" it had been carefully hiding, thinking it had "credible evidence" I'd been working for EMC. Adams sent me a letter saying that my online LinkedIn profile page indicated: (i) I'd been working for EMC continuously since 2007 (including throughout my tenure at IBM), because it contained some wording to the effect "Present (5 years)"; and (ii) my employment with IBM had already ended earlier in the year (2012)! Appendix Z.d.

I was shocked. Shocked! Has any company ever acted so stupidly against an innocent employee? I hadn't even *looked at* my LinkedIn page, much less *edited* it, **for more than a year**. But now I rushed to see what the fuss was all about. Amazingly, my LinkedIn profile did indeed read as IBM said it did. Here's what I saw (relevant excerpt only):

Experience

Consulting Engineer

Public Company; 10,001+ employees; EMC; Information Technology and Services industry
2007 – Present (5 years)

The Atmos product (internal name Maui) is a "cloud"-class storage system, supporting data objects identified by 44 hex chars or string names, a rich set of primitives, access via REST/SOAP/NFS/CIFS/FuseIFS. My focus is mostly performance (speed/stability/scalability), in particular the development of a very sophisticated Grinder-based perf/load tool in Jython/Java, which has proved indispensable to Dev/QA/ProSvcs/etc.

Also integrated RKM (RSA Key Manager [RSA is a subdivision of EMC]) into Maui, and for VMware (another subdivision of EMC) introduced OSGi into vSphere (computing-as-a-service "cloud operating system").

Software Engineer

2010 – 2012 (2 years)

Server Developer

Public Company; 5001-10,000 employees; JNPR; Computer Networking industry
2004 – 2007 (3 years)

The Steel-Belted Radius (SBR) product is an AAA server (authentication, authorization, accounting), implementing the RADIUS protocol (Remote Authentication Dial-In Service), an essential component of contemporary networking management and security (policy and control) infrastructure. Target customers are high-end enterprises and telecommunications common carriers.

Primary contribution has been High-Availability (HA). Architecture consists in off-boarding internal highly dynamic system state (Current Sessions Table (CST), IP Address Table, etc.) to an external fault-tolerant datastore cluster, where it is shared amongst multiple instances of SBR. A farm of these "stateless" SBRs is thereby highly available in the aggregate (via client-side load-balancing). The cluster technology chosen is MySQL Cluster (a.k.a. Network Database, NDB), accessed directly via specialized low-level transactional NDB API. The solution is highly reliable, performant and scalable.

Patent pending.

Now, everybody who's ever looked into LinkedIn (or anywhere on the Internet, for that matter) knows that online information is notoriously unreliable. In the case of LinkedIn, this often happens for two well-known reasons: the online information seems to get tangled up in itself, in inexplicable ways, and for inexplicable reasons (though a reasonable guess is that the user-interface is confusing and/or buggy); and the online information quickly goes out-of-date, because members neglect to update their profiles for long periods of time. So for IBM to (pretend to) place great reliance on a LinkedIn page is *a priori* nonsensical.

In my case, there had been no tangles with my LinkedIn profile: everything I'd written in my profile was correct when written. But it was certainly the case I had neglected to update my profile in a timely manner. That was quite intentional, for personal reasons.⁴⁹ Possibly,

49. Namely, I was reluctant to publicly reveal I'd been out-of-work for 11 months, December 2009 – November 2010 (though I had plenty of blameless company, due to hard economic times). Indeed, it was this very unemployment experience that had put me on my guard about age-discrimination. During that time, I'd had a number of interviews, which I knew I'd "aced", yet I wasn't given an offer. Another consequence of this unemployment experience was that I determined I'd submit to blepharoplasty

LinkedIn *itself* was responsible for the (i) “Present (5 years)” notation, in a misguided attempt to pretend people wasted their time keeping their LinkedIn profiles assiduously up-to-date (even though that would be contrary to LinkedIn’s User Agreement).⁵⁰ But no matter what my LinkedIn profile said, there was a trivially definitive way for IBM to resolve the question of my EMC employment: just ask EMC.⁵¹

As to the wording (ii) that my employment at IBM had already ended in 2012 — it’s insipid that IBM would pretend to rely upon that, because IBM’s *own* records proved otherwise.

But there was a third piece of information about my LinkedIn profile *much* more interesting reason than either (i) or (ii) above. Namely: (iii) I hadn’t posted *any* information whatsoever on my LinkedIn profile concerning employment at IBM (much less that it had ended earlier in the year). **I had been hacked: the entire IBM entry in my LinkedIn profile was a forgery!** This forgery is even visible *a priori*: the IBM entry (see image, above) is in an entirely different style (“different handwriting”) than the other entries.

I was utterly outraged by IBM’s insane behavior, of course (not even considering the obvious assumption that IBM itself had hacked my LinkedIn profile, either by rogue individuals or corporately). IBM’s note constituted harassment/retaliation/etc. I informed IBM about all this by email, in no uncertain terms, the night of Tuesday, May 8. Appendix Z.d.

32.5 Demand To Know My New Company

Adams responded the next day, Wednesday May 9, her tone now much subdued (presumably in recognition that IBM had been caught with its hand in the cookie jar). She now asked directly where I worked. Appendix Z.e.

But there was no way I was going to make myself vulnerable to a potential back-channel attack by IBM, and I told Adams so, the next day, Thursday, May 10. Appendix Z.e.

32.6 PLOA Gambit

At this point, IBM committed itself yet more affirmatively to the Dark Side, proving they’d stop at nothing to fire me. Adams sent me an email on Friday, May 11, telling me very explicitly that I was in violation of the IBM PLOA (Personal Leave of Absence) policy, and demanding to know the identity of my new company. Appendix Z.f.

Problem is, Adams was knowingly lying through her teeth about the PLOA policy, provably so (with no attempt to hide it), and I told her so, in great detail, on Monday, May 14. Appendix Z.f.

surgery, so wouldn’t “look so old”, and a prolonged unemployment period wouldn’t happen again. I did have the surgery, on Thursday, July 7, 2011 (Old Complaint, Part II, fn. 51, p. 4, and elsewhere).

50· Which states, in relevant part (Secton 2B, emphasis added): “You own the information you provide LinkedIn under this Agreement ... It is *your* responsibility to keep your LinkedIn profile information accurate and updated.”

51· EMC may have wanted to clear the divulgence of information to me, and I would have consented to that, as I told IBM in my email of Appendix Z.f, 05/14/2012 04:31 PM.

32.7 “Competitive Employment”

Their search for “hard cause” for termination having been defeated, IBM saw their legitimate options exhausted, so they now turned to the illegitimate “soft cause” of “competitive employment”, as Adams called it, in another of her “*faux* emergency” emails, on Tuesday, May 15. Appendix Z.g.

Unfortunately for IBM, the “soft” course they were now pursuing didn’t meet the standards of the employment contract in place, as I’d previously studied, and as I now pointed out in my responses of Wednesday, May 16 and Thursday, May 17, wherein I also made final pleas for justice (satisfactory resolution of my outstanding IDRs, and grant of reasonable accommodation via transfer). Appendix Z.g.

32.8 The Last Straw: “Constructive” Dismissal

IBM had finally realized it was “defeated” (i.e., could find no *just* reason for severing our employment relationship). So now they simply threw caution to the winds, and preemptively *wrongfully terminated me, without valid reason* — other than (discrimination-)retaliation/etc, of course.

Specifically, in his email to me on Thursday, May 17 (Appendix Z.h), Dan stated his precise reasons for terminating me, all of which were known-false/invalid/bogus:

- “... you could not explain the reason your LinkedIn page indicated you were consulting for EMC for the past five years ...”
 - Right: I couldn’t, because I didn’t know, as I told IBM, and I also stated that everything I’d ever written on LinkedIn was correct when written, and that my LinkedIn profile had been actively/illicitly hacked (05/08/2012 09:15 PM), and that I was looking into it. And I did particularly emphasize that the “Present (5 years)” information was false, and offered to cooperate with IBM in obtaining the correct/certified information directly from EMC (05/14/2012 04:31 PM, item #2). But in actuality of course, IBM had no need/interest for such certification, since obviously they already knew all this anyway.
- “... you also acknowledged that you currently have other employment in the technology industry ...”
 - Right: that’s perfectly consistent with IBM contract/policy (05/10/2012 09:37 AM, first paragraph). I knew of my duty to avoid “conflict of interest”, and I did so assiduously (to the best of my ability). What I didn’t initially know about was my obligation to “consult” with IBM regarding potential perception of “conflict of interest”, but once I learned about it, I did so, proactively and immediately (05/14/2012 04:31 PM, item #4).
- “... you have been unwilling to date to advise IBM of where you currently employed ...”
 - Right: I have no obligation to do so (for the same reasons as cited under the previous bullet item, just above). To the contrary, I did have a very good/valid reason for not doing so (05/10/2012 09:37 AM, second paragraph).

In other words, this was a “**constructive dismissal**” — but it was a twisted/perverse/cynical version of even that tortious concept. “Constructive dismissal” usually means that *employee resigns* because employer *forces/coerces* them to do so, in the sense that employer knowingly constructs workplace conditions which no reasonable employee could be expected to endure. In my case, “constructive dismissal” means employer *fires employee* for doing something any reasonable employee would do, because employer constructs, fully knowingly, conditions *forcing/coercing* employee to do that very thing. Appendix Z.h, 05/16/2012 04:33 PM.

namely, get a job

32.9 Forensics Courier

But even *after* IBM’s ultimate act of wrongful termination was consummated, IBM couldn’t resist tossing in a few additional/gratuitous acts of (discrimination-)retaliation and IIED/harassment/etc., for good measure. For now, in his email of Thursday, May 17, Dan additionally demanded that I (i) leave the data/information on the laptop intact, with (ii) passwords supplied. And, a courier would be sent to pick up my laptop, was this was not a “mere”/ordinary courier — he was (iii) a forensics courier, based out of Washington, DC. The laptop was indeed picked up by the courier, an employee of the world’s leading commercial computer/digital forensics company, AccessData, on Tuesday, May 22. Appendix Z.i.

should
be “but”

The problem is, these conditions are all diametrically opposed to the *usual and customary* practices of the industry in general, and of Netezza/IBM in particular. I’ve never been subjected to, nor even heard of, items (i), (ii) or (iii) before. To the contrary, at all other places/occasions I’ve ever turned in a old laptop (including Netezza/IBM), I’ve been encouraged to *not* supply data/passwords, and instead to proactively “sanitize” the laptop by deleting and/or “zeroizing” (overwriting) the harddisk, then simply handed the laptop to a member of IT, HR or management. A sanitization procedure, when done properly, makes “recovery-of-information attack” of the laptop impossible, so there’s no need/use for any forensic chain-of-custody or laboratory analysis of the laptop.

dele.
“ed”

In other words, I was being subjected to *disparate treatment*: an extraordinary level of scrutiny, without any indication of wrongdoing or provocation by me whatsoever. Except the obvious: that I’d complained about illegal, discriminatory behavior, and had stood up for my rights by filing an MCAD charge.

should be “terminate”

Fortunately for me, I’d already perceived that IBM was determined to termination me “by any means possible” (they weren’t exactly subtle about it), so I previously (on Saturday, May 12) sanitized (zeroized) my laptop — per the single-pass overwrite-with-zeros technique,⁵² advised by the *Great Wiping Controversy* paper (of Brian Maly “stonewalling” incident fame; Old Complaint, Addendum V, Sec. 57.3, p. 19). Else, who knows what mischief IBM would have tried to perpetrate?⁵³

per BCG, p. 15: “dispose
as soon as possible”

52. Via the Linux command “dd if=/dev/zero of=/dev/sda”, run from a Fedora “live CD”. It took ~10 hours to complete (could have gone faster had I specified a larger block size to the dd command, but I was in no hurry). Note this didn’t “destroy” (render unusable, even temporarily) the harddisk: it only overwrote with zeros the “high-level formatting” (operating system, file system) data area, not the “low-level formatting” data area (disk controller).

53. “Give me six lines written by the most honest man in the world, and I will find enough in them to hang him.” — Cardinal Richelieu (attrib.)

32.10 Separation Packet

Dan's email of Thursday, May 17, also mentioned that a packet of "standard separation paperwork" (consisting of a Statement of Understanding, a Checklist of financial obligations/property, and information for applying for unemployment benefits) would be mailed to me, which I was supposed to complete (sign) and return "promptly". Appendix Z.

I did receive the separation packet, but I didn't sign or return any of it, just as I wrote Dan I wouldn't.⁵⁴

33 LinkedIn: Hunt For Hackers

As soon as IBM accused me of shenanigans with my LinkedIn profile (Section 32.4), I contacted LinkedIn (by filling in a form on their website). LinkedIn was initially resistant to sharing any information with me; then they loosened up a bit; but then they tightened down again. Appendix AA.

should be "share"

Most importantly, the information provided to me by LinkedIn proved that my profile had indeed been hacked, on March 5 — a date which I had *certain knowledge/memory* I did *not* visit my LinkedIn profile for any reason (because I hadn't even *looked at* my LinkedIn profile since long before the beginning of the year 2012, much less *edited* it)! Appendix AA.

So I asked LinkedIn for more information, so I could continue tracking down the hackers. Unfortunately, Lady Luck intervened, in the form of public disclosure of a serious "leak of password file" information by LinkedIn.⁵⁵ Appendix AA. This no doubt slowed down any help I was getting from LinkedIn.

Finally, though, LinkedIn representative Christian Lee and I arranged for a phone conversation on Friday, July 6 (Appendix AA); Christian called me at approx. 2:30 pm. We talked for about a half-hour. He told very definitively me that LinkedIn did *not* have any records/information beyond what had already been forwarded to me (in Appendix AA), and it had no way to retrieve any further records/information.

I had no further recourse. And so, with Lee's phone call, my pursuit of the LinkedIn connection arrived at a dead-end. The perpetrators of the LinkedIn hacking had escaped due to LinkedIn's poor security practices/processes: especially, (i) failure to notify me whenever my account had been edited (so I could raise an alert if it wasn't I who'd made the edit), and (ii) failure to archive website transaction records.⁵⁶

54. Not included (irrelevant to this Complaint).

55. No, I had nothing to do with it, I swear! ☹️

56. Nevertheless, I would really like to pursue the avenue further. But I can't do so by myself (since LinkedIn was now stonewalling me). So the only way I can pursue it further is via legal process. I hope to do that. Note that I'd formally put LinkedIn on notice (Appendix CC) that it must preserve any evidence it has.

34 BCG Vs. Manipulation Of Financial Markets (Redux)

At Old Complaint, Addendum II, Section 40, I wrote about IBM's "'Values/Trust' Brand/Strategy", i.e., how IBM uses its widely-publicized self-pious BCG to *illegally* manipulate financial markets, by *falsely publicly* pretending to be a very moral/ethical company in order garner investor confidence/investment, while *in reality privately* being to opposite, a very immoral/un-ethical company to its employees (especially, but with a mindset like that, who can doubt it spills over into *all aspects* of IBM culture?).

It's a powerfully attractive argument, utterly damning if true. And I certainly found sufficient proof (at Old Complaint, Appendix II, Section 40 and Appendix PP) to, at least, *kick-start* an SEC investigation. But now I've found even more, which should be enough to *force* an SEC investigation. Appendix BB. ("Etc., etc., etc. ... There's tons of this stuff out there", as I said at Old Complaint, Appendix II, p. 9, mid.)

34.1 Ethical Conduct Vs. SEC Filing

in the negative (Hebrew)
sense, see Old Complaint,
Part II, fn. 101, p. 27

To begin with, we note that IBM actually has the chutzpah to submit SEC filings which *gratuitously* (such assertions being un-required by SEC) cite its own self-professed "**Ethical Conduct**", based upon *known-false* (given that the IBM Executive Suite assiduously refused to lift a finger in my case, despite multiple pleas for help, though supplied with proof beyond doubt) *assertions-of-fact* (Appendix BB.a.):

■ ETHICAL CONDUCT

Every executive is held accountable to comply with IBM's high ethical standards: IBM's Values, including "Trust and Personal Responsibility in all Relationships," and IBM's Business Conduct Guidelines. This responsibility is reflected in each executive's Personal Business Commitments, and is reinforced through each executive's annual certification to the IBM Business Conduct Guidelines. An executive's compensation is tied to compliance with these standards; compliance is also a condition of IBM employment for each executive.

34.2 Pretended Corporate Responsibility Policies

Next, we note that IBM self-trumpets, *known-falsely*, its own self-beatification by saintly Corporate Responsibility Policies of Business Conduct, Laws, Ethics, and Communications. The point being, of course, that its self-publication is hung off the IBM home page on the World Wide Web, spinning an enticing web for customers/investors/partners. You need merely point a browser at <http://www.ibm.com> (you'll land at <http://www.ibm.com/en/us> if you're in the United States), click on "Corporate responsibility" at the bottom of that page, then click on "IBM policies" on the next page, to read wondrous words such as these (Appendix BB.b):

■ Business conduct & ethics

IBM is committed to principles of business ethics and lawful conduct. It is IBM's

policy to conduct itself ethically and lawfully in all matters and to maintain IBM's high standards of business integrity.

Employees must at all times comply with IBM's business conduct and related guidelines. Violation of any IBM guideline is cause for discipline, including dismissal from the company. Employees should consult their management immediately if they have any question whether their actions could violate an IBM guideline.

...

The Senior Vice President and General Counsel is responsible for providing specific instructions regarding business conduct and ethics and, as appropriate, directing periodic reviews, including business conduct guideline certification programs, to ensure compliance. Each operating unit or subsidiary is responsible for implementing such instructions, including administering certification programs.

■ **Laws, including regulations and other legal requirements**

IBM will comply with all applicable laws, regulations and other legal requirements in all locations where it conducts business.

■ **Ethical dealings**

IBM expects its employees to conduct business in accordance with the highest ethical standards, and maintains Business Conduct Guidelines that employees are required to follow. IBM strictly complies with all laws and regulations on bribery, corruption and prohibited business practices.

■ **Communications**

IBM makes available to all employees open communications channels for suggestions and complaints to management. IBM maintains channels for direct contact with the corporate office for employee complaints, including any form of harassment including sexual harassment.

34.3 IBM Wrote The Book On Corporate Deception

Still not convinced IBM knowingly uses its false-piety *specifically to bludgeon financial markets?* Well, then, you need a refresher course in corporate history, back to the inception of the BCG-as-cornerstone-of-IBM. Sam Palmisano, Chairman and CEO of IBM, and Founding Father of the BCG, has stated on-the-record many times that the BCG is specifically intended to influence investors and markets. Here's a prime example: no smaller a forum than a business book (now in its 5th edition), popular and definitive in its subject-area, which is targeted at no less an audience than *audit committees tasked with helping boards of directors discharge their fiduciary responsibilities to shareholders and financial reporting processes!* Appendix BB.c.

Yes, it was this very same Sam Palmisano who himself personally OK'd (at the level of refusing to intervene) in my crucifixion. Old Complaint, Part II, Section 27, p. 34.

APPENDICES — Addendum III

W Emails: Wahoo Starts Breathing

W.a Welcome To The Ballpark

■ From: Walter Tuvell
To: Cambridge
BCC: Daniel Feldman
Date: 03/30/2011 01:18 PM
Subject: Welcome to the ballpark!

So with the latest kit, we're finally in the Skimmer ballpark! We even beat Skimmer on some tests, for the first time!!

There are some obvious discrepancies, but now at least we can start zeroing in on specific problems. Towards that end, I've started writing up a primer on PerfBar tests that can guide us, but as I mentioned yesterday, 2 days' work evaporated (Fedora blue-screen in the middle of an OpenOffice save), so I'll be starting over on it soon.

The failures below (negative numbers) are all common to both Skimmer and WahooProto. I conjecture they're due to some bug introduced into mainline, i.e., something was changed in trunk, picked up into Wahoo, but PerfBar failed to track it. So let's not worry about that, I'll be following it up.

There was a Wahoo hang on the rollback test near the bottom, so killed the test. We'll have to look into whether that's expected (unimplemented) or a bug.

In the meantime, time to kick off a TPC-DS test for a quick read on that. Stay tuned!

ATOMICS TEST	S1-8	WahPro
create_drop	25.59	. 1.90
sctas	-0.12	-0.26
gen_stats	-0.12	-0.05
cross_join 2.16	. 6.00
count_distinct	15.41	. 6.89
delete	-0.12	-0.06
except	109.63	202.46
full_outer_join	-0.12	-0.08
intersect	107.37	207.61
join_broadcast	12.05	. 9.13
join_distribute	12.03	. 7.48
join_multi_hash	21.84	15.56
join_spu	-0.12	-0.10
large_agg	37.10	37.35
left_join	-0.12	-0.09
merge_join 6.69	. 6.00
minus	106.72	208.54

```

nested_loops .....| . 4.72| . 6.36
order_unload .....| . 7.17| -1.78
reorder_customer .....| . 6.82| 25.61
reorder_web_returns .....| . 3.94| . 9.95
response .....| 15.35| . 8.64
right_join .....| -0.12| -0.05
scan .....| 14.74| . 4.45
self_join .....| -0.12| -0.05
single_insert .....| -0.12| -0.07
single_update .....| -0.12| -0.09
single_delete .....| -0.12| -0.05
single_insert_transaction| -0.12| -0.06
single_update_transaction| -0.12| -0.08
single_delete_transaction| -0.12| -0.08
sort .....| . 7.04| . 7.99
sub_select .....| 15.19| . 6.31
three_way_join .....| 16.50| 10.13
union .....| 31.58| 17.37
update_dhj .....| -0.12| -0.11
rollback .....| 10.39
reclaim .....| . 0.00
backup_iisi .....| . 0.15
restore_iisi .....| . 0.24

```

■ From: Devesh Agrawal
 To: Walter Tuvell
 Date: 03/30/2011 01:33 PM
 Subject: Re: Welcome to the ballpark!

I am wondering where I can look at the plan files (for both skimmer and wahoobox) for the queries highlighted in bold.

```

ATOMICS TEST          | S1-8 |WahPro

cross_join .....| . 2.16| . 6.00
count_distinct .....| 15.41| . 6.89

except .....|109.63|202.46

intersect .....|107.37|207.61
join_broadcast .....| 12.05| . 9.13
join_distribute .....| 12.03| . 7.48
join_multi_hash .....| 21.84| 15.56

large_agg .....| 37.10| 37.35

merge_join .....| . 6.69| . 6.00

minus .....|106.72|208.54

nested_loops .....| . 4.72| . 6.36

order_unload .....| . 7.17| -1.78

```

```

reorder_customer .....|. 6.82| 25.61

reorder_web_returns .....|. 3.94|. 9.95

response .....| 15.35|. 8.64
scan .....| 14.74|. 4.45

sort .....|. 7.04|. 7.99

sub_select .....| 15.19|. 6.31
three_way_join .....| 16.50| 10.13
union .....| 31.58| 17.37

```

■ From: Walter Tuvell
 To: Devesh Agrawal
 Date: 03/30/2011 01:37 PM
 Subject: Welcome to the ballpark!

/nz/Bar5.1/results/kit.6.1.D2.wahoo10_wtuvell/tpcds100

■ From: Walter Tuvell
 To: Devesh Agrawal
 Date: 03/30/2011 01:39 PM
 Subject: Welcome to the ballpark!

That was WahooProto. On Skimmer, it's:

/nz/Bar5.1/results/kit.6.0.P7/tpcds100

■ From: Daniel Dietterich
 To: Walter Tuvell
 Date: 03/30/2011 01:49 PM
 Re: Welcome to the ballpark!

Where can I see what the rollback test is doing?

■ From: Walter Tuvell
 Date: 03/30/2011 02:01 PM
 To: Daniel Dietterich
 Re: Welcome to the ballpark!

/nz/Bar5.1/sql/atomics/rollback.sql

Plans at /nz/Bar5.1/results/kit.6.1.D2.wahoo10_wtuvell/tpcds100/rollback

W.b Tomorrow Is Another Day

■ From: Walter Tuvell
To: Cambridge
Bcc: Daniel Feldman
Date: 03/30/2011 04:35 PM
Subject: Tomorrow is another day

Well, it seems that hang at the end of Atomics killed WahooProto. I had to nzstop, and while a regular (data-preserving) restart was sufficient to bring NPS back on-line, it wasn't sufficient to run a TPC-DS test (that just hung as well). Which means I had to restart NPS from scratch (nzinitsystem, i.e., "~nz/restart 4 -R").

So the TPC-DS 100GB DB is building now, and then I'll kick off a TPC-DS test sometime this evening.

News at 11 (a.m.).

■ From: Jerrold Richard Title
To: Walter Tuvell
Cc: Cambridge
Date: 03/30/2011 05:33 PM
Subject: Re: Tomorrow is another day

Yes it is. Except in the movie Groundhog Day, where tomorrow is the same day again.

I'll take a look at the rollback problem (hang) tomorrow. It must have left things in a corrupted state.

■ From: Walter Tuvell
To: Jerrold Richard Title
Cc: Daniel Dietterich
Date: 03/30/2011 06:07 PM
Subject: Re: Tomorrow is another day

1. OMG, Harvie vs. Techie. It's ON! ►*"Harvie" is a well-accepted short-hand reference to Rich's alma mater (Harvard); "Techie", to mine (MIT).*◄

2. Dan was also looking at the hang, CC'ing him.

W.c It's Alive

■ From: Walter Tuvell
To: Cambridge
Bcc: Daniel Feldman
Subject: It's Alive!

Date: 03/31/2011 11:01 AM



TPC-DS QUERYID	S1-8	WAHPRO
query001	10.203	14.13
query001v	9.077	8.63
query002	81.043	190.62
query002v	38.728	25.64
query003	16.572	7.35
query006	65.915	126.30
query007	17.407	16.03
query008	17.968	11.96
query011	123.494	237.59
query011v	79.544	70.99
query012	8.951	10.93
query013	20.518	16.01
query014b	-2.156	-31.89
query014bv	-0.195	-0.08
query015	26.643	15.27
query016	23.584	11.96
query017	-0.144	-0.07
query018	17.008	14.07
query019	19.116	12.74
query020	10.686	
query021	12.19	9.57
query022	132.328	281.55
query022v	128.957	294.97
query025	-0.127	-0.05
query026	10.907	9.63
query027	17.346	12.45
query028	85.201	29.05
query029	-0.126	-0.05

query030	14.237	25.27
query030v	14.611	21.94
query031	42.767	57.00
query031v	121.06	93.70
query032	21.136	9.44
query033	36.907	24.14
query033v	32.696	20.95
query034	16.151	11.49
query036	18.82	20.97
query037	21.182	11.00
query038	43.641	30.25
query039	170.685	446.40
query039v	64.509	89.76
query040	8.646	29.60
query041	8.261	7.01
query042	16.147	7.58
query043	16.364	8.24
query044	60.053	24.70
query046	20.306	15.74
query047	30.839	38.42
query047v	57.076	80.08
query048	16.855	9.75
query049	37.24	22.69
query050	42.914	19.75
query051	106.99	181.04
query051v	93.662	131.76
query052	14.796	6.29
query053	16.827	9.53
query054	38.945	25.20
query055	15.676	7.07
query056	35.173	23.29
query056v	31.49	20.81
query057	23.599	25.74
query057v	38.606	43.61
query058	28.617	30.37
query058v	24.54	24.04
query060	35.906	22.98
query060v	31.988	21.01
query061	7.76	27.00
query062	7.477	7.63
query063	15.252	8.32
query065	138.533	202.59
query066	21.805	18.67
query067b	29.526	24.74
query068	4.384	15.81
query069	32.978	18.29
query070	31.724	25.62
query071	32.215	17.26
query072	-0.129	-0.05
query072v	-0.129	-0.05
query073	15.984	10.49
query074	48.251	63.12
query074v	63.02	47.96
query076	32.532	18.06
query077	41.305	30.15
query077v	33.945	24.09
query079	17.878	12.55

query081	12.593	21.82
query081v	14.41	19.41
query082	23.678	11.17
query083	11.355	21.63
query083v	7.115	16.32
query084	6.082	11.38
query086	8.057	8.85
query087	44.854	31.59
query089	19.172	11.73
query090	11.291	9.48
query091	8.458	15.17
query092	34.844	18.69
query094	16.275	10.84
query096	14.914	8.19
query098	16.249	13.04
query099	10.628	9.26

X Emails: Filing Of New Complaint, Addendum II

■ From: Walter Tuvell

To: Russell Mandel

CC: grometty@us.ibm.com, rkaplan@us.ibm.com, dfeldman@us.ibm.com, fknabe@us.ibm.com, knabe@alum.princeton.edu, jmetzger@us.ibm.com, pmoghe@us.ibm.com, arvindk@us.ibm.com, rjl@us.ibm.com, pomalley@us.ibm.com, rosemt@us.ibm.com, lhattter@us.ibm.com, castelf@us.ibm.com, adamsd@us.ibm.com, tfleming@us.ibm.com, jrmac@us.ibm.com, sam@us.ibm.com, kschwartz@us.ibm.com, awmckeen@us.ibm.com, smcafee@us.ibm.com, rmara@us.ibm.com, bmaly@us.ibm.com, phouliha@us.ibm.com, tonyhart@us.ibm.com, mgutierr@us.ibm.com, jgrif@us.ibm.com, dflaxman@us.ibm.com, jfinnert@us.ibm.com, dalyk@us.ibm.com, jbast@us.ibm.com, dbarrett71@us.ibm.com, lalderto@us.ibm.com, wackerman@us.ibm.com, ahaldar@us.ibm.com, Al Pfluger <adp415@us.ibm.com>, deanka@us.ibm.com, jwentworth@us.ibm.com, agalasso@us.ibm.com, gbooman@us.ibm.com, john.yates@us.ibm.com, pds@us.ibm.com, adeb@us.ibm.com, jshkolni@us.ibm.com, lutzl@us.ibm.com, iamfelix@us.ibm.com, smizar@us.ibm.com, jeffk@us.ibm.com, dagrawal@us.ibm.com, chenh@us.ibm.com, slubars@us.ibm.com, rtitle@us.ibm.com, msporer@us.ibm.com, gdickie@us.ibm.com, ddietterich@us.ibm.com, ttignor@us.ibm.com, lstabile@us.ibm.com, dnoe@us.ibm.com, bbrick@us.ibm.com, bethts@us.ibm.com, ckime@us.ibm.com, kyurhee@us.ibm.com, lisadue@us.ibm.com, campbely@us.ibm.com, mwieck@us.ibm.com, gilliamb@us.ibm.com, blachance@us.ibm.com, pfrancisco@us.ibm.com, vfortin@us.ibm.com, cwarner@us.ibm.com

Subject: New Complaint, Addendum II

Date: 03/09/2012 03:49 PM

Russell -

Attached is Addendum II to my New Complaint, incorporating your illegal acts of this week. It is to be considered as part of my Third Open Door, of course.

- Walt

►Attachment, *IbmTransfer-AddII.pdf*, not included here.◄

■ From: Walter Tuvell
To: Fritz Knabe
Date: 03/09/2012 03:50 PM
Subject: Fwd: New Complaint, Addendum II

►The content of the preceding email was included here, with its attachment.◄

■ From: Russell Mandel
To: Walter Tuvell
Date: 03/13/2012 10:29 AM
Subject: Re: About your letter ►Note the "Re:" here is out-of-place. There had been no preceding email to which this one was replying (or, more properly, this email was responding to my email entitled "New Complaint, Addendum II"). This indicates that this email had been passed around internally at IBM for review before sending to me.◄

On March 6, 2012, IBM restricted your access to IBM systems because you were causing disruption by failing to utilize the proper mechanism for raising concerns about HR related issues. It has come to our attention that you are now using a personal email address to engage in the same conduct. We have discussed on multiple occasions the need for you to direct your issues with IBM and IBM personnel to a limited distribution list, more specifically, to me.

As my previous notes to you stated, the concerns and appeals program is the clearly defined mechanism which allows you to raise your concerns in an orderly way. I am your point of contact for the concerns and appeals process. IBM considers your continuous emailing of copies of your complaint and numerous addenda -- to dozens of people unrelated in any way to the concerns and appeal process -- disruptive to IBM's business.

If this conduct continues, you will be subject to discipline, up to and including termination.

Y Email Chain: MetLife Denial Of LTD

■ From: Diane Adams
To: Walter Tuvell
Date: 04/25/2012 03:54 PM
Subject: Long Term Disability Benefits

We are aware that your application for Long Term Disability Benefits was denied. If you intend to appeal, we can accommodate you by enabling you to remain on an

unpaid LOA while the appeal is pending. You must file an appeal within 180 days of the denial of benefits. Please confirm that you intend to appeal.

■ From: Walter Tuvell
To: Diane Adams
Date: 04/25/2012 09:09 PM
Subject: Re: Long Term Disability Benefits

Yes, I certainly DO intend to appeal, within the 180 days you specify in your note (included below). Please acknowledge receipt of this response, and confirmation of the terms specified in your note, and/or any other terms I should be aware of. In particular, please specify precisely the end-date of the "180 days" specified.

Also, please update me on the status of the two other pieces of job-related business between myself and IBM (as opposed to external administrative/judicial legal system business) which currently remain in-process:

(i) My third Open Door C&A process (charging Russell Mandel himself with specific wrongdoing).

(ii) My very-long-standing request/demand for ADA reasonable accommodation via transfer/reassignment, which the law mandates that IBM take proactive action on (noting that IBM has abjectly failed to take any such action to date, has falsely interfered with the transfer I had previously set-up for myself (with Chris Kime's group), and has now even rescinded all my electronic and physical access to IBM resources, preventing me from participating directly -- all quite illegally).

Thank you.

■ From: Walter Tuvell
To: Tammy Crawford
Date: 05/05/2012 07:19 AM
Subject: To Tammy Crawford (Claim #651202106445)

Tammy -

This is to inform you that I have received your letter, dated Apr. 17, denying my claim for LTD benefits. Attached.

Concerning the right to appeal, I hereby state that I DO intend to appeal, on or before the date specified by the letter (180 days from receipt of the letter, which was Apr. 24 [due to traveling]).

Furthermore, IBM has informed me of the same right to appeal, and the same 180-day deadline (though IBM hasn't told me the start date for their clock). Attached letter from Diane Adams.

I have already communicated to IBM my intent to appeal. Also attached. By the instant letter, I hereby additionally affirm to IBM my intention to appeal.

The MetLife letter warned me about contacting the ESC within 30 days. I've tried doing that, but was trapped in voice-response hell, and got nowhere. I'll try again next week. However, even if I never contact the ESC, the MetLife letter is wrong about "IBM consider you to have voluntarily resigned". That's because: (i) the MetLife letter comes from MetLife, not IBM, and MetLife cannot authoritatively speak for IBM in matters concerning the status of IBM employees; (ii) the Diane Adams letter was written after the MetLife letter, hence supercedes it, and does speak authoritatively for IBM, and the Adams letter states the 180-day deadline, not the 30-day deadline.

Based on the above, it is my understanding that with the instant letter I have now fulfilled all the requirements necessary for me to remain an IBM employee in good standing (albeit on unpaid leave) while appealing the MetLife decision. Please inform me forthwith if any part of my understanding is incorrect.

- Walt Tuvell

►Attachments (omitted here): PDFs of the MetLife denial letter, and the two preceding emails.◄

■ From: Walter Tuvell
To: Tammy Crawford
Date: 05/05/2012 07:37 AM
Subject: To Tammy Crawford (Claim #651202106445)

Tammy -

As an addendum to the email I just sent you a few minutes ago, I note the following language in the MetLife letter of Apr. 17:

<quote>

Upon request, MetLife will provide you with a copy of the documents, records, or other information we have that are relevant to your claim and identify any medical or vocational expert(s) whose advice was obtained in connection with your claim.

</quote>

I hereby DO request ALL such information. This includes transcriptions of phone calls, which I was notified were being recorded. This is necessary for my appeal.

Thank you.

- Walt Tuvell

■ From: Walter Tuvell
To: Tammy Crawford
Date: 06/04/2012 07:53 PM
Subject: To Tammy Crawford (Claim #651202106445)

It has now been more than 4 weeks since I wrote you the note included below. I have not yet received the materials I asked you for. Please send the materials as soon as possible, so that I may prepare my appeal.

You've probably heard that IBM fired me (illegally), that I've filed suit against them (disability discrimination and other charges), and that I now have another job. None of that negates my claim, because I am of course only seeking LTD benefits for the period time I was eligible for LTD benefits. Those dates were Jan 25 - Mar 11, less than 7 weeks.

Also, as I've told you before, I want to keep all communications with MetLife on-the-record (email or surface mail), so please don't place any more phone calls to me.

■ From: Tammy Crawford
To: Walter Tuvell
Date: 06/06/2012 03:09 PM
Subject: Re: To Tammy Crawford (Claim #651202106445)

I placed a copy of your file in the mail to you today.

Please let me know if you have any questions.

Z Email Chain: Witch-Hunt; Termination

Z.a Preliminary Lawyer Probe

■ From: Rob Mantell
To: Walter Tuvell
Date: 04/30/2012 11:38 AM
Subject: Confidential

Hi Walt,

Joan Ackerstein, who represents IBM, called me. She asked me directly if you were working for another company, and I said yes. She asked if it was your position that you were unwilling to return to work at IBM, and I said no, that you were willing to return if offered the proper position with the proper reasonable accommodations. She said she would be working on the MCAD position statement.

Z.b Indirect Accusation Via Ackerstein; EMC Fiasco

■ From: Rob Mantell
To: Walter Tuvell
Date: 05/02/2012 03:00 PM
Subject: Confidential

I got a call from Joan Ackerstein today, asking whether you are working for EMC. I told her that I would not tell her where you are working, and could not respond to the question.

■ From: Carol Carpenter ►*Assistant to Ackerstein (and others) at Jackson Lewis.*◄
To: Rob Mantell
CC: Joan Ackerstein
Date: 05/03/2012 9:14 AM
Subject: Walter Tuvell

SENT ON BEHALF OF JOAN ACKERSTEIN

Please see attached. Thank you.

►*The referred-to attachment was the following 1-page PDF letter.*◄



jackson lewis
Attorneys at Law

Representing Management Exclusively in Workplace Law and Related Litigation

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May 3, 2012

BY ELECTRONIC MAIL

Robert S. Mantell
Rodgers, Powers & Schwartz LLP
18 Tremont Street
Boston, MA 02108

Re: *Walter Tuvell*

Dear Mr. Mantell:

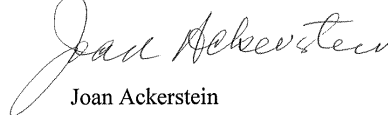
This letter is to follow up on our telephone conversation of May 2, 2012 regarding your client, Walter Tuvell. I asked you during that conversation whether Mr. Tuvell was working for EMC. You stated that you would not comment, one way or another, and did not answer that question.

Unless we hear back from you by 9:00 a.m. on May 4, 2012, that Mr. Tuvell is not working for EMC Corporation in any capacity, such as an employee, consultant or contractor, and that he was not working for EMC Corporation in any capacity, such as an employee, consultant or contractor, at any time since he became an IBM employee, IBM will presume that Mr. Tuvell is working for EMC or was at some point during his employment with IBM.

I look forward to hearing from you.

Very truly yours,

JACKSON LEWIS LLP


Joan Ackerstein

JA: cac

- From: Robert Mantell
Sent: Thursday, May 03, 2012 8:29 PM
To: Carol Carpenter
CC: Joan Ackenstein JoanCarpenter
Subject: RE: Walter Tuvell

Hi Joan,

Mr. Tuvell has done absolutely nothing that would lead you to conclude that he works for or has worked for EMC.

Z.c Direct Attack By IBM; FOURTH Open Door C&A

- From: Diane Adams
To: Walter Tuvell
Date: 05/07/2012 12:48 PM
Subject: IBM Business Conduct Guidelines

►Note the italics and “smart-quotes” in this note, which was written in Times New Roman font (all present in the original). This was very uncharacteristic of Adams’ style, indicating the note had been very meticulously drafted (probably by others, then given to Adams).◄

Walt:

This letter is regarding your employment with IBM. IBM believes that you currently are or have been during the course of your employment in violation of one of IBM’s Business Conduct Guidelines.

Specifically, it appears that you currently are or have been during the course of your employment with IBM working for EMC Corporation in some capacity, such as an employee, consultant or contractor. That is a matter of significant concern to IBM since it considers EMC to be a competitor and you never asked for consent or obtained it.

IBM has Business Conduct Guidelines which set out the core values of trust and personal responsibility it expects its employees to embrace. One of those Guidelines relates to conflicts of interest. Section 5.1 of IBM’s Business Conduct Guidelines states the following:

“An obvious conflict of interest is providing assistance to an organization that markets products and services in competition with IBM’s current or potential product or service offerings. You may not, without IBM’s consent, work for such an organization in any capacity, such as an employee, a consultant or as a member of its board of directors.”

It appears that you violated this Business Conduct Guideline. Given the seriousness of this situation, IBM has determined that your employment will be terminated ef-

fective at 5:00 PM on May 8, 2012. If IBM is incorrect about your working with EMC Corporation, please contact me before that time to confirm that you are not currently and have not been at any time while an IBM employee working for EMC as an employee, consultant or contractor.

■ From: Walter Tuvell
To: Diane Adams, Dan Feldman, Rob Mantell ►*Inclusion of Rob was an "auto-completion" error. I'd intended to send to Russell Mandel instead. See below.*◄
Date: 05/08/2012 03:48 PM
Subject: Re: IBM Business Conduct Guidelines

As you know, my attorney, Rob Mantell, informed IBM's attorney, Joan Ackerstein, by email on May 3: "Mr. Tuvell has done absolutely nothing that would lead you to conclude that he works for or has worked for EMC." [Apart from the work I did for EMC before I joined for IBM, of course.]

That is the truth. And that is where the matter should have ended: as an exploratory conversation between attorneys.

But remarkably, you have now chosen to take this matter to an entirely different level. Namely, by your wordings -- "IBM believes ... you ... are ... in violation", "significant concern", "core values of trust and personal responsibility", "conflict of interest", "it appears that you violated", "seriousness of this situation", "your employment will be terminated" -- you have now chosen, as an officially authorized representative of IBM (as opposed to mere attorney/attorney side-discussion), to falsely impute/accuse me of unethical and/or illegal behavior, and threaten me with termination therefor -- WITH NO CREDIBLE BASIS WHATSOEVER.

If I am wrong about that, then I hereby invite/demand that you produce, forthwith, the credible intelligence (including the names of informers, if any) upon which you base your accusation. If you are able to do so, then I will immediately apologize for, and withdraw, the remainder of the instant email.

But you and I both know you cannot do so. For, if you had such credible basis in your possession, you'd simply terminate me immediately (properly), rather than threaten to terminate me.

That (i.e., the absence of credible basis) means that you personally -- together with whatever person(s) put you up to this (if anyone) -- have now proactively and directly implicating yourselves in known-false (or in wanton disregard for the truth, and with subjective awareness of probable falsity) accusation of me, of committing unethical/illegal acts, specifically in relation to my vocation/profession.

There are at least three problems with this:

(i) It is beyond obvious that you have been in communication with certain other persons (in particular, Joan Ackerstein, perhaps via a chain of other persons) about this matter. That amounts to "publication". Your published, false accusation of rep-

utation-injuring activities by me, therefore amounts to DEFAMATION. That is illegal, of course. Indeed, since your accusation is specifically in regard to my vocation/profession, your false accusation is actually defamation "per se", i.e., it requires no proof of special damage. Nevertheless, special damage has indeed occurred, namely, your threat to terminate me PROVES that my reputation has actually been injured.

(ii) What is the motivating REASON for your defamation, and threat of termination of my employment? That also is beyond obvious: There can be but one and only one reason, namely, retaliation/harassment/bullying/IIED against me for my long-standing claims of age/sex/race/disability discrimination and other wrongdoing (including previous acts of defamation and IIED), and now also for my recent filing of MCAD charge regarding same. Hence, your/IBM's act amounts to yet a NEW act of (defamation-based) RETALIATION. That is also illegal, of course.

(iii) Finally, you specifically cite the BCG. It is a binding contract, as you know (because all employees must certify allegiance to it every year, as a condition of employment). However, the clause of the BCG you cite causes you problems: "providing assistance ... products and services in competition with IBM's current or potential product or service offerings". These are the problems it causes you:

(iii)(a) (1)The wording "providing assistance" is far too non-specific to be enforceable, because there are very many positions with EMC (or any other company) that are too tenuously connected to IBM's legitimate business interests to constitute valid unethical/illegal behavior. (Does playing second base on EMC's softball team constitute "providing assistance"?) (2) The clause is far too broad, because of IBM's very expansive reach of "current" offerings. (3) And the clause is impossibly over-broad, because IBM's "potential" offerings extend literally to EVERY other gainful occupation on the planet. Taken together, these three objections show that the clause is an unconscionable term of contract.

(iii)(b) How many other people at IBM have been prosecuted under this clause of the BCG? On the "no credible basis" standard (discussed above), it must be the case that you have been dunning literally EVERY other IBM employee (equally without credible basis) about such "conflict of interest". If you are not doing that (and I'm sure you aren't), but instead are singling me out for special treatment (I'm sure you are), then it proves that I am being subjected to disparate treatment -- again for the beyond-obvious reason of retaliation/harassment/bullying/IIED.

None of this behavior is surprising, coming from you. It perfectly fits the pattern of culpable conduct you have personally displayed in continuously persecuting me throughout my ordeal of the past year, all the way from advising Dan Feldman to attack me the way he did (as he himself freely volunteered to me), to your present very-long-running stance of completely stonewalling my request for reasonable accommodation via transfer.

By CC'ing Russell Mandel on this email, I hereby submit these unethical/illegal acts of yours to him, as my FOURTH Open Door C&A complaint. (Noting that my THIRD complaint also remains in-process at this time.) Even if he "determines"

that acts of true illegality are "beyond the scope" of his investigative ability/responsibility/authority, surely the obvious breach of BCG ethics is not.

- Walt Tuvell

Z.d LinkedIn Fiasco

■ From: Diane Adams
To: Walter Tuvell
Date: 05/08/2012 06:32 PM
Subject: Re: IBM Business Conduct Guidelines

Walt,

Your public LinkedIn page states that you have been a Consulting Engineer at EMC from "2007- Present (5 years)". The page also identifies IBM as a "Past" employer. Please answer the question either yes or no - Have you worked for EMC in any capacity, such as a contractor, consultant, or employee during the course of your IBM employment?

If you do not definitively deny that you currently are working for EMC in some capacity or that you have worked for EMC in some capacity during your employment with IBM within 24 hours, IBM will have no choice but to conclude you have had sufficient opportunity to provide an answer to this question.

■ From: Walter Tuvell
To: Diane Adams, Dan Feldman, Rob Mantell, Dan Feldman ►*Inclusion of Rob was an error. See below.*◄
Date: 05/08/2012 09:15 PM
Subject: Re: IBM Business Conduct Guidelines

You must be joking. In my letter earlier today (included below), I wrote "known-false", and I charged you/IBM with "defamation", which of course includes as part of its very definition "falsity". That says very explicitly that your accusation is false. I have of course NOT worked for EMC since Dec 2009 (I started at Netezza in Nov 2010). And you/IBM know it. You can't convincingly pretend otherwise. For that reason, my charge of defamation/retaliation/etc. stands ("wanton disregard for the truth, and with subjective awareness of probable falsity"). Indeed, by your present note, you are continuing your harassment of me.

Furthermore, you cannot convincingly pretend you've relied on my LinkedIn profile. The last time I edited it was in 2009 (when I added the EMC profile), and I haven't touched it since, or even looked at it. I know this for a fact, because I've consciously avoided updating it, or looking at it (for personal reasons). I don't know why it says I've been at EMC for "2007-Present (5 years)"; I'm not a LinkedIn "power user", so I don't know its editorial policies. Perhaps LinkedIn automatically writes things like "Present (5 years)" in profiles that aren't kept up-to-date, but

that's just a guess. But it's not my responsibility to figure things like that out -- it is your/IBM's responsibility to do the due-diligence of figuring things like that out, before you recklessly go around discussing it amongst yourselves ("publication") and making wild accusations about me. As a matter of fact, I have myself noticed crazy entries in LinkedIn profiles for various people (not myself, until now), and wondered how they got that way, because it's simply not credible that so many people would be so sloppy as to make such nonsensical mistakes, unless some sort of LinkedIn glitch were to blame.

In any case, no matter what LinkedIn says, you cannot pretend to believe what it says about me/EMC/IBM. For if you were to believe it, you would have to believe that I was somehow employed simultaneously by EMC and IBM beginning in Nov 2010. That's stupidly non-credible on its face, by any stretch of anyone's imagination. For, if I HAD been simultaneously by EMC and IBM, you surely cannot really think I'd be so stupid as to advertise that fact on LinkedIn!

But here's the biggest problem: That entry in LinkedIn for IBM as a past employer for 2010-2012 -- IS A FORGERY! I didn't know it existed until just now. I didn't put it there, and I have no idea how it got there. But I intend to find out. One possibility is that somebody captured my LinkedIn password (from, say, Netezza's network or elsewhere), and used it to forge my LinkedIn profile.

Whoever put that entry in LinkedIn is not merely a defamer. He/she is now most likely a criminal.

■ From: Walter Tuvell
To: Diane Adams, Rob Mantell, Russell Mandel, Dan Feldman
Date: 05/08/2012 09:39 PM
Subject: Re: IBM Business Conduct Guidelines

It was an inadvertent error of mine to include Rob Mantell on this note. I'd intended to include Russell Mandel instead. Sorry.

►*Included here were copies of the preceding four emails.*◄

Z.e Demand To Know My New Company

■ From: Diane Adams
To: Walter Tuvell
Date: 05/09/2012 05:18 PM
Subject: Re: IBM Business Conduct Guidelines

Walt:

Thanks for your response. IBM needs to ensure that a current employee is not engaged in competitive employment. Please advise where you have been working during your leave.

■ From: Walter Tuvell
To: Diane Adams
Date: 05/10/2012 09:37 AM
Subject: Re: IBM Business Conduct Guidelines

No. I will NOT inform you where I am currently working. There is NO requirement, under either BCG or employment contract, that I do so. There is only a requirement that I abide by the terms of those contracts, and I hereby affirm that I have faithfully done so throughout the entirety of my tenure at IBM, and will continue to do so.

I will, however, tell you why I refuse to inform you where I now work. The reason is that I fear IBM, either by rogue individuals or corporately, would happily use such information to work back-channels to get me fired (even though that would constitute tortious interference with advantageous relationship).

Z.f PLOA Gambit

■ From: Diane Adams
To: Walter Tuvell
CC: Dan Feldman
Date: 05/11/2012 03:10 PM
Subject: Re: IBM Business Conduct Guidelines

IBM has a legitimate business need to ensure that its competitive position in the marketplace is not compromised. We advised you of the basis of IBM's concern with your employment; your LinkedIn page states that you have been a consultant at EMC from 2007 to the present and that your employment with IBM ended in 2012.

IBM's Leave of Absence Policy requires employees to seek written permission to work for another employer while on an LOA. Please see attached policy and the language under, "Working for Another Employer While on an LOA." You are clearly in violation of that policy.

As an IBM employee you have an obligation to cooperate with management. We are asking you to cooperate by providing information on where you are working. Please provide that information by 5:00pm on Monday, May 14, 2012. If you do not do this, we will have no choice but to presume you are engaged in competitive employment and act accordingly.

►*The referred-to attachment was a 2-page PDF below, from the IBM online "employee handbook", outlining the PLOA program.*◄



You and IBM - United States

Updated on 02 May 2012



[Leaves of absence](#) > [Personal leaves of absence](#) > [How PLOA works](#) >

Personal leave of absence

How the program works

Management approval

All regular full-time and part-time employees can [apply for](#) and take a Personal Leave of Absence (LOA) with management approval. The approval is based on a review of eligibility criteria and the balance between employee and business needs. Management will review:

- Reasons for the request
- Needs of the business
- Satisfactory job performance
- Current [accumulated leave time](#)

Length of leave

You may be approved for any number of leaves as long as your accumulated leave time doesn't add up to more than 36 months. If you've been combining LOA time with intermittent returns to regular employment - either full-time or part-time - and you haven't returned to regular employment for 24 consecutive months, prior LOA time will be counted against your three-year maximum accumulated leave time.

If you're eligible for time off under the Family and Medical Leave Act, additional time off will be provided. In this case, you will still need to be back to work for 24 consecutive months before you are eligible again for a Personal LOA.

To extend your LOA or to convert it to a different type of leave, you must submit an e-mail written request to your manager at least four weeks prior to the expiration of your current leave. Your request should include the type of leave being requested, the reason for the leave and the desired duration. The decision to extend your LOA will depend on business needs when you make your request and your

accumulated leave time.

Employee benefits while on LOA

When you're on a Personal LOA, you're eligible for similar benefits plans and programs as other regular employees.

Health benefits

Your cost for health benefits remains the same unless you make a change to your existing coverage. Your health benefits will be available at the same cost as active employees who are not on a leave of absence, for up to 36 months. After 36 months, your cost will increase to the same level as other employees on unpaid leaves of absence for more than 36 months.

Working for another employer while on LOA

Employees on LOA must be available at all times to return to work with IBM. Additionally, employees who wish to work for another employer while on LOA must first make a written request and receive written approval from their IBM manager to ensure that:

- There is no suitable work available at IBM the employee could perform while on LOA.
- The employment is unrelated to the reason the employee is requesting the LOA (excluding LOAs to gain international experience by working as a complementary employee for IBM in another country).
- The nature of the employment is considered by the manager to be inconsequential or non-substantial to IBM (for example, incidental retail employment, cashier).
- The employment is not in conflict with the IBM Business Conduct Guidelines.

Managers should consult HR if there is any question whether the request meets all of the above criteria.

■ From: Walter Tuvell
To: Diane Adams
CC: Dan Feldman
Date: 05/14/2012 04:31 PM
Subject: Re: IBM Business Conduct Guidelines

Diane -

This is in response to your email of last Fri, May 11.

1. Concerning PLOA:

According to the Personal Leave Of Absence policy document you sent/cite, in order for me to be on PLOA status, it is a requirement that I must first apply for PLOA (and subsequently receive approval for said application from management). No such application ever existed, in any format. Therefore I am provably NOT on PLOA.

[Incidentally, I note the PLOA page you sent was updated just a few days ago, on May 2. Hence it is inapplicable to me. Please supply me with the previous version that is applicable to me. Note also that the page abbreviates Personal Leave of Absence inconsistently, as "PLOA" in the page title and once near the top of the page, and "LOA" elsewhere. But note also that the abbreviation "LOA" is nondeterminative, because it is also used in other contexts to refer to other kinds of "leave" -- see the reference to "Skills for Growth LOA" in the attached screenshot. And the unadorned word "leave" appears to be defined nowhere, so it must presumably be interpreted according to its common-language meaning ("excused absence from work"). Also, I now have no access to w3 or other IBM resources, so please send me a copy of ALL "employee handbook-like" items, w3 or elsewhere.]

Instead of PLOA, what actually happened is that both Dan and you preemptively granted me unpaid leave (in writing) -- freely without prompting from me (in particular, no application/approval), and unconditionally (time deadlines only, but no citation of policy). When you did so, you never mentioned "personal leave of absence", nor did you require that I "apply" for PLOA, nor did you mention or point me to the policy you sent governing PLOA. To the contrary, you specifically stated I was being granted unpaid leave for the specific purpose of resolving issues concerning LTD insurance benefits with MetLife. This is a "health-related" leave granted by IBM, and NOT a "personal" leave sought by me. To that end, see the attached "smoking gun" screenshot -- it shows (in the listing at the left-hand side) that PLOA is in a totally separate category from "health-related leaves"; PLOA is a category of leave totally inapplicable to me. You, as an "HR professional", MUST KNOW that very well.

Hence, the PLOA policy you sent/cite doesn't apply to me. The fact that the PLOA policy includes a "seek written permission" requirement, but no such requirement exists elsewhere (in particular, not in employment contract or BCG), is proof that IBM intends such a requirement to apply only to PLOA, but not elsewhere. Therefore that requirement does not apply to me.

The fact that you now falsely claim otherwise, and threaten my position based on false assertion of inapplicable policy, clearly constitutes yet another act of retaliation.

But it gets worse than that. For you assert, as a matter-of-fact, "You are clearly in violation of that policy". That statement-of-fact is known-false (by the preceding), and injurious to my reputation (because it impugns my reputation with respect to employment/vocation/profession). It is also published, because you CC'd Dan Feldman -- not to mention your beyond-obvious consultation with others. Therefore, it is proven defamatory.

Consequently, I hereby add the instant incident to my FOURTH Open Door C&A.

2. Concerning your/IBM's reliance upon LinkedIn:

As I have stated, all the information I have ever submitted to LinkedIn is perfectly true, appropriate, and correct when submitted. I'm in the process of attempting to find out how the incorrect information came to appear on LinkedIn.

The appropriate/prudent course of action for you to have taken was to simply ask me: "We've seen your LinkedIn profile, and it appears to indicate concurrent employment at EMC and IBM, what's up with that?" -- and not the intimidating/retaliatory/defamatory course of action you did undertake. And then, if you weren't satisfied with my answer (as you indicate you still aren't), all you need to do is ask EMC for the definitive dates of my employment (if you do that, presumably EMC will request my permission to disclose the information, to which I will consent). Your deliberate avoidance of this well-known commonsense approach, in favor of confrontation and intimidation, speaks to IBM's retaliatory mindset.

Incidentally: Now that you've drawn my attention to the problems with LinkedIn, I plan to close my LinkedIn account. Please let me know if you have any objection to my plan to close my Linked account.

3. Concerning your statement that I "have an obligation to cooperate with management":

I am now, always have, and always will, "cooperate with management", to the extent consistent with my medical limitations, and the protection of my rights under civil law.

The definition of "cooperation" applicable under the present circumstances is, embodied in the employment and BCG contracts (and other "employee handbook" items, all of which need to be interpreted in the light of prevailing circumstances, as is true of all contracts). In those contracts, it is stated that I may not participate in activities giving rise to conflict of interest. I have not done so, and I have so informed IBM.

Note that the concept of "interpretation in light of prevailing circumstances" is con-

templated and codified in the BCG itself (p. 6, parenthetical comment added): "Remember, there are no simple shortcuts or automatic answers for the choices we have to make in business today. No single set of guidelines [such as the BCG itself!] or policies can provide the absolute last word to address all circumstances. Therefore, we expect IBMers to use sound judgment in all of their conduct and ask for help when needed."

Which brings up a subsidiary point. You have now cited an "employee handbook" item (the PLOA policy webpage) as if it were contractual. I agree with that subsidiary point. It validates a point of mine, wherein I've cited many of IBM's webpages (and other writings) over time as if they were contractual. Thank you.

4. Concerning "information" (as you put it) on where I am now working:

The BCG (p. 26) requires me to "consult" with IBM about potential conflicts of interest, and I agree that's reasonable as a general precept (though I was unaware of this clause until I just now read it). And I have done that. But note that the term "consult" is not defined by the BCG, and as always must be interpreted in the context of circumstances.

To that end, I am willing to respond to reasonable questions about what I am doing, to satisfy IBM that I am not acting in conflict with my role at IBM. I will respond to such questions without revealing to IBM information that will allow IBM to continue to hurt me. Given IBM's consistent unilateral unethical/illegal behaviors against me, I am fully/reasonably justified in fearing back-channel retribution, sabotaging/undermining my current employment situation, if I were to reveal my employer's identity. And that is the ONLY reason I refuse to reveal that identity (as opposed to "hiding a conflict of interest" or anything else).

For example, I hereby volunteer the following "information": Insofar as I've been able to determine (and, yes, I've explicitly made inquiries), IBM is simply not a competitor of my new company. IBM equipment/software/services seems never to have appeared as an RFP opponent, for example. Quite the contrary, the ONLY "information" about IBM I've heard/seen anywhere in my new company is that "our stuff integrates with IBM's stuff, insofar as it appears in customer environments at all, but IBM's presence there is vanishingly tiny". This is not competition, but complementarity, favorable to IBM's legitimate business interests (which is puny, given the paucity of IBM in our environment) -- precisely the opposite of "conflict of interest".

The BCG nowhere requires me to reveal the identity of my employer (that requirement only exists in the PLOA policy, see above). The BCG only requires me to avoid conflict-of-interest, and to "consult" with IBM thereunto. That's exactly what I've done, and what I've promised to do going forward. To the extent we disagree about this, a trusted third party may be needed to adjudicate. I'm comfortable taking that route.

5. Concerning your threat of presumption of engagement in competitive employment:

Such a presumption would be both false and totally unjustified. For, I've given you (above) an averment/awareness of the very-probable falsity of such a presumption. The reason such a presumption is "very-probably" false is this: nothing I've said/written to date, in the many hundreds of pages of testimony I've supplied to you regarding my case, has been false -- or exaggerated, misinterpreted, misleading, incomplete, or even disputed/challenged. That puts the weight of probability clearly on my side (>99.999%) [noting that the applicable legal standard is merely "preponderance of the evidence", >50%].

Again, I'm comfortable taking this to an unbiased trier-of-fact. Any such presumption on your part will easily be seen for what it actually is, namely, a fig-leaf attempt to falsely mask the ultimate act of discrimination-based retaliation: wrongful termination, and consequent avoidance of my two in-process Open Door C&A investigations, and request for reasonable accommodation via transfer.

6. Concerning retaliation per se:

I've written about the concept of "retaliation per se" previously. IBM is now engaging in yet another dimension of this. Namely, all these false attempts of yours to "trap" me in a conflict-of-interest situation has taken place in the context of my MCAD charge. What began as a simple inquiry into my current job status between lawyers has morphed into EXPLICIT HARASSMENT/INTIMIDATION, by coercing me to respond to your threats within ridiculous very short "faux emergency" deadlines (just 1-2 business days, no doubt hoping I'd be traveling and accidentally miss out). There is no reason whatsoever for such short deadlines, and I demand they cease.

- Walt

►Attached was the screenshot already included at my Old Complaint, Addendum III, Appendix SS, p. 11.◄

■ From: Walter Tuvell
To: Dan Feldman, Russell Mandel
CC: Diane Adams
Date: 05/14/2012 04:43 PM
Subject: Re: IBM Business Conduct Guidelines

I intended to CC you two.

►Attached was the preceding email.◄

Z.g “Competitive Employment”

■ From: Diane Adams
To: Walter Tuvell
CC: Dan Feldman

Date: 05/15/2012 02:42 PM

Subject: Re: Fwd: Re: IBM Business Conduct Guidelines ►*Note the "Re: Fwd:" prepended to this subject-line, indicating this email had "made the rounds".*◄

Walt,

IBM has been attempting for approximately the past two weeks to find out if you are engaged in competitive employment. The reason for that is that your LinkedIn page states that you are. You did not immediately deny that employment. Now that you have denied employment with EMC, you are asking IBM to take it on faith that you are not working for a competitor. IBM is not prepared to do that.

As you know, IBM is engaged in a highly competitive industry. For that reason, IBM employees may not work for a competitor in any capacity without obtaining consent.

IBM should not have to ask this question repeatedly. Please advise IBM where you currently are working by 5pm tomorrow.

■ From: Walter Tuvell
To: Diane Adams
CC: Dan Feldman
Date: 05/16/2012 04:33 PM
Subject: Re: Fwd: Re: IBM Business Conduct Guidelines

Diane -

The employment relationship is a contractual one, and as already shown there exist no contract terms (employment contract, BCG, or related "employee handbook") that obligate me to reveal the identity of my new employer. And, you have refused to follow up on my invitation for a collaborative/interactive dialog that would provide you information (short of said identity) confirming that there should be no concern about competition.

As is more-than-obvious to everyone, the ONLY reason I've taken my new job is that IBM has FORCED/COMPELLED me to do so. Simply put, IBM has falsely denied me my livelihood, thereby forcing me to seek an alternative source of income. Under the circumstances, NO REASONABLE PERSON in my position could be faulted for taking a side-job, as I have done, while continuing to pursue my rights within and without IBM's processes. Indeed, it would be unreasonable to expect me NOT to take a side-job under these circumstances.

No one can deny IBM has affirmatively constructed a set of conditions under which I've been forced/compelled to seek/accept my side-job (noting that I did not even begin considering my new company until after IBM reduced my pay to \$0.00, after the end of my STD; and even then it arose from a letter from a recruiter reaching out to me, not vice versa). For IBM to now be harassing/persecuting me for doing what IBM itself has forced me to do, is exceedingly perverse/cynical.

Similar constructive circumstances are also the root cause that I cannot reveal the identity of my new employer. IBM has constructed a set of conditions under which no reasonable/rational person would be safe revealing the identity of their employer. Again, it's perverse/cynical to be hounding me for taking the only rational course of action available to me.

Not only perverse/cynical. Illegal. Because, what you're doing ("retaliating upon me for taking actions IBM itself has forced me to take") is "retaliation per se" (ultimately traceable back to my claims of discrimination, of course).

Now it's your turn: I call on you to progress/resolve my 2 pending Open Door C&A's (as you're contractually obligated to do), and grant me reasonable accommodation transfer (as you're legally obligated to do). After those tasks are satisfactorily completed, I'll reveal the identity of my new employer.

- Walt

■ From: Walter Tuvell
To: Russell Mandel
CC: Diane Adams, Dan Feldman
Date: 05/17/2012 07:33 AM
Subject: Re: Fwd: Re: IBM Business Conduct Guidelines

Russell, I meant to CC you on this. It is to be added to my FOURTH Open Door C&A.

The point being (as summarized in the final paragraph): If IBM wants me to "stop 'competing' against them" (by relinquishing my new job), all they have to do is resolve my 2 outstanding complaints and put me back into an accommodating/transferral position. As they are REQUIRED to do by BCG ethics/contract, and by law, anyway.

Z.h The Last Straw: “Constructive” Dismissal

■ From: Dan Feldman
To: Walter Tuvell
CC: Diane Adams
Date: 05/17/2012 04:59 PM
Subject: Next Steps

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.

■ From: Walter Tuvell
To: Dan Feldman
Date: 05/17/2012 05:22 PM
Subject: Re: Next Steps

Dan -

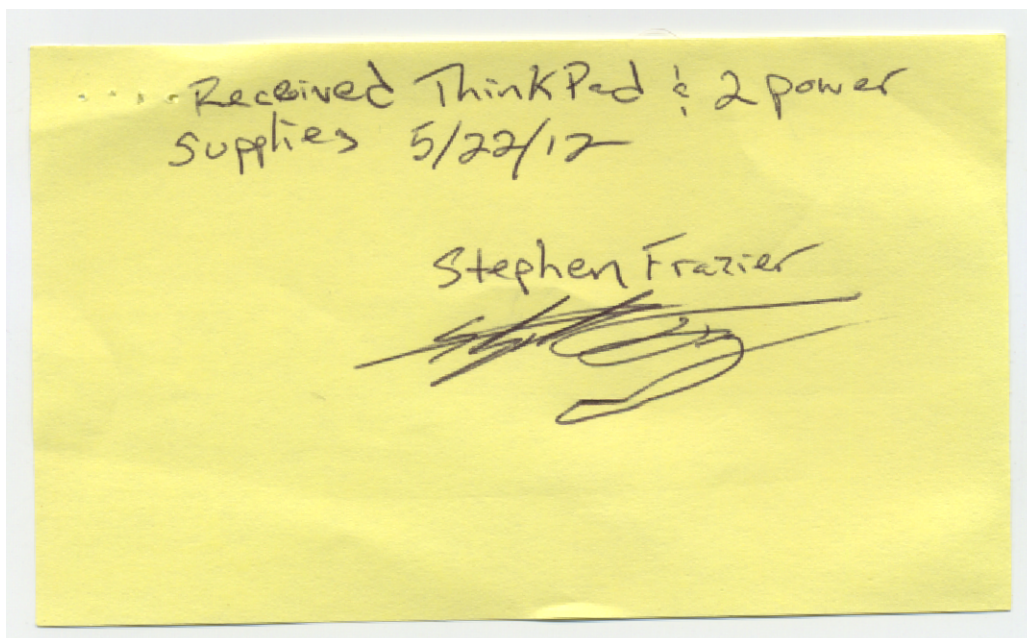
I DID explain what happened with the LinkedIn page, namely that it was hacked, and that my complaint to LinkedIn about that hacking is in-process. As for the side-employment, I've explained that IBM FORCED me to take that job. For these and many other reasons (numerous instances of defamation, IIED, discrimination, discrimination-retaliation), this act of yours/IBM's constitutes wrongful termination.

Your courier can pick up the laptop next Tue, May 22, between 9 and 11 AM. I will not be home, my wife will turn the laptop over. It's too late about the data though, as I sanitized (zeroized) the disk last weekend. Feel free to subject the laptop to whatever forensics you desire (including determining whether the date of zeroization was really when I claim). I did so because that's the standard at Netezza/IBM. Namely, when IBM acquired Netezza and we traded the Dells in for Thinkpads, IT advised me that they were going to zeroize the disks, and requested me to do so before I handed it over to them, to make their life easier. So that's what I did then, and that's what I've done now. There has been no loss of any proprietary information thereby (either the previous time, or this), as everything was already backed up in other places anyway (wiki, or other machines at Netezza). The harddisk password is "fedora1bm".

You can send me the separation package, but I won't be signing anything or returning it, since I have no obligation to do so.

Z.i Forensics Courier

► Business card, handwritten receipt, and LinkedIn profile of courier who picked up my laptop, on May 22. ◀



LinkedIn® Account Type: Basic | [Upgrade](#)[Home](#) [Profile](#) [Contacts](#) [Groups](#) [Jobs](#) [Inbox](#) 59 [Companies](#) [News](#) [More](#)**Steve Frazier**

3rd

Computer Forensic Consultant at AccessData

Washington D.C. Metro Area | Computer Software

Current **Computer Forensic Consultant** at **AccessData** 

Past Computer Forensic Consultant at D3-services

Education Blue Ridge

Connections 52 connections

Public Profile <http://www.linkedin.com/pub/steve-frazier/38/526/136> Share PDF Print

Experience

Computer Forensic Consultant**AccessData** Privately Held; 201-500 employees; Computer Software industry
November 2010 – Present (1 year 8 months)**Computer Forensic Consultant****D3-services**

2009 – 2010 (1 year) | Dumfries, Virginia

Education

Blue Ridge

Gen Ed

Additional Information

Groups and
Associations:AccessData
[Join](#)

AA Email Chain: LinkedIn

- From: LinkedIn Customer Support
To: Walter Tuvell
Date: 05/09/2012 06:51 AM
Subject: Content And Intellectual Property Violations (Other Than Copyright Infringement) [Ticket: 120509-001044]

LinkedIn Customer Support Message

Subject: Content And Intellectual Property Violations (Other Than Copyright Infringement)

Thanks for contacting us and we'll get back to you as soon as possible.

Original Contact:

Member Comment: Walter Tuvell

05/09/2012 05:51

I believe my LinkedIn account has been hacked, specifically, material has been forged/added, which is false, and which has caused me injury (in legal negotiations I am currently undergoing preparatory to filing a lawsuit at court). Please send me contact information, so that my lawyer can contact your lawyer.

- Walter Tuvell



Would you like to learn more about how to harness the knowledge and expertise of your network? Find training resources on the [LinkedIn Learning Center](#) or browse FAQs on the [LinkedIn Help Center](#). Visit our [LinkedIn Company Page](#) and our [Facebook Page](#). Check out [New on LinkedIn](#), follow us on [Twitter®](#), or get the new [LinkedIn App for iPad](#).

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- From: LinkedIn Customer Support
To: Walter Tuvell
Date: 05/09/2012 03:00 PM
Subject: Content And Intellectual Property Violations (Other Than Copyright Infringement) [Ticket: 120509-001044]

LinkedIn Customer Support Message

Subject: Content And Intellectual Property Violations (Other Than Copyright Infringement)

Dear Walter,

Legal process may be served on LinkedIn in person, via certified mail or express courier at our corporate headquarters address below; we do not accept service via fax or email.

LinkedIn Corporation
ATTN: Legal Dept.
2029 Stierlin Court
Mountain View, CA 94043
USA

If you have further questions, please contact our Legal department at legalprocess@linkedin.com.

Thank you for being a valued member.

Regards,

LinkedIn Privacy Team

Original Contact

Member Comment: Walter Tuvell 05/09/2012 05:51

I believe my LinkedIn account has been hacked, specifically, material has been forged/added, which is false, and which has caused me injury (in legal negotiations I am currently undergoing preparatory to filing a lawsuit at court). Please send me contact information, so that my lawyer can contact your lawyer.

- Walter Tuvell

?

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- From: Walter Tuvell
To: LinkedIn Customer Support
CC: Rob Mantell
Date: 05/09/2012 03:27 PM
Subject: Re: Content And Intellectual Property Violations (Other Than Copyright Infringement) [Ticket: 120509-001044]

Just to be clear: I have no quarrel with LinkedIn itself, just with whoever seems to have hacked into my account.

My lawyer, Rob Mantell, is CC's hereto, he'll be in contact.

Thank you.

■ From: LinkedIn Customer Support
To: Walter Tuvell
Date: 05/16/2012 02:08 PM
Subject: Content And Intellectual Property Violations (Other Than Copyright Infringement) [Ticket: 120514-004071]

LinkedIn Customer Support Message

Subject: Content And Intellectual Property Violations (Other Than Copyright Infringement)

Hi Walt,

I'm sorry but we're unable to provide audit logs of profile changes. For your convenience, please use the link below to reset the password and access your account.

Password Reset Link:
<http://www.linkedin.com/passwordReset>

IMPORTANT:

- Remove any existing characters in the "Enter new password" field and then re-enter your new password.
- If you receive an error message using the link above, confirm that <https://www.linkedin.com> is a trusted site in your browser's security settings and try again.

If you know you have the correct login and password, clearing your browser's cookies or saved passwords may resolve the issue.

Instructions for Clearing Cache and Cookies:
<https://help.linkedin.com/app/answers/global/id/1285/ft/eng>

For Firefox only - Clearing Old Saved Passwords
<https://help.linkedin.com/app/answers/global/id/5354/ft/eng>

Regards,

Jason
LinkedIn Privacy Team

Original Contact:

Member Comment: Walt Tuvell 05/14/2012 14:17

I believe my LinkedIn account has been hacked. Can you please send me the audit logs of all changes to my profile? Since I own my profile (according to the User Agreement), there should be no problem doing, this, right?

Thank you.

?

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■ From: Walter Tuvell
To: LinkedIn Customer Support
Date: 05/17/2012 07:41 AM
Subject: Re: Content And Intellectual Property Violations (Other Than Copyright Infringement) [Ticket: 120514-004071]

OK, so maybe you don't want to give me the logs themselves, but at least you should be willing to tell me WHEN the changes happened. The two changes I'm interested in are:

1. The EMC entry includes the wording "- Present (5 years)". When I last updated that EMC entry, it was 2009, so "present" at time referred to 2009, not 2012. I ended my employment at EMC in 2009, and have not updated my LinkedIn profile since then. So whoever wrote "(5 years)" has changed my profile, without my permission. I need to know when that was done.

2. The whole IBM entry is a forgery. I never put that in. I need to know when that IBM entry was added.

Ideally, I'd like to know WHO did these modifications to my profile, and data (such as IP addrs) leading to that information may be in your logfiles. Since this is MY profile, can you please tell me WHY you won't release the audit records to me?

- Walt Tuvell

[PS. I'm now using this GMail account, instead of the MIT and UChicago mail accounts, because it's much more reliable.]

■ From: LinkedIn Customer Support
To: Walter Tuvell
Date: 05/18/2012 09:58 AM
Subject: Content And Intellectual Property Violations (Other Than Copyright Infringement) [Ticket: 120514-004071]

LinkedIn Customer Support Message

Subject: Content And Intellectual Property Violations (Other Than Copyright Infringement)

Dear Walt,

I just got your request for DATA relating to your LinkedIn account.

In order to obtain this account information, please complete LinkedIn's Data Consent form attached to this message.

Thank you for being a valued member.

Regards,

LinkedIn Privacy Team

Discussion History:

►The "Discussion History" mentioned in this email consisted of the preceding email chain, so need not be included here again. The "Data Consent form" is also is not included here (irrelevant to this complaint).◄

- From: Walter Tuvell
To: LinkedIn Customer Support
Date: 05/19/2012 06:09 AM
Subject: Re: Content And Intellectual Property Violations (Other Than Copyright Infringement) [Ticket: 120514-004071]

Thank you for your accommodating response, I really appreciate it.

The signed consent form is attached. I hope this electronic email version is sufficient, but if you want me to additionally send a paper copy to the surface mail address supplied on the form, please let me know.

►“Data Consent form” not included here (irrelevant to this complaint).◄

- From: LinkedIn Customer Support
To: Walter Tuvell
Date: 05/21/2012 02:09 PM
Subject: Content And Intellectual Property Violations (Other Than Copyright Infringement) [Ticket: 120514-004071]

LinkedIn Customer Support Message

Subject: Content And Intellectual Property Violations (Other Than Copyright Infringement)

Hi Walt,

Unfortunately it can only be received by postal mail, not email. I sincerely apologize for the inconvenience.

Regards,

Frank
LinkedIn Privacy Team

Recent Discussion History:

►The “Recent Discussion History” mentioned in this email consisted of the two preceding emails, so need not be included here again.◄

- From: Walter Tuvell
To: LinkedIn Customer Support
Date: 05/21/2012 05:10 PM
Subject: Re: Content And Intellectual Property Violations (Other Than Copyright Infringement) [Ticket: 120514-004071]

OK, it'll be in the mail tomorrow. Thanks. ►And it was.◄

■ From: Christian Lee ►*Of LinkedIn.*◄
To: Walter Tuvell
Date: 05/30/2012 03:59 PM
Subject: ►*Subject-line omitted in original.*◄

Dear Mr. Tuvell:

LinkedIn is in receipt of your data consent form requesting the records of your account. In response to your request, LinkedIn is producing herewith the following records:

- The Member Control page for the account, which sets forth details of the account including the subscriber's name, account number, and email address used to create the account
- Our IP records of the account, which capture the dates and IP addresses from which the account was created and accessed
- Snapshot of the member profile of the account
- Connections
- Communications

If you have any questions or concerns, please feel free to contact me.

►*Attachments, "Data_Tuvell, Walter.pdf" and "Data_Tuvell, Walter (communications).csv" not included here (most of it was irrelevant to this Complaint; see next email for relevant excerpts).*◄

■ From: Walter Tuvell
To: Christian Lee
Date: 05/30/2012 08:39 PM
Subject: Thanks for the help so far

Christian, thank you every much! I really appreciate how proactive you/LinkedIn are being in helping me. The information you've sent me is partially what I need. But now I wonder if you'd be willing to go a step further?

My problem is that somebody has actively hacked/forged part of my LinkedIn profile. Specifically, if you'll take a look at my profile (snippet attached, Profile.png), the IBM entry is in a "different handwriting" than the others. I didn't post it, and I'm trying to figure out who did. This may seem trivial to you, but it's of vital importance for me, for reasons that would take too long to explain here. (But for the record, I have no beef whatsoever with LinkedIn, just with the hacker.)

In the information you sent me, there was an "activity log" (see ActivityLog.png attachment). It shows my profile was last modified at 10:23:45 PM on Mon, Mar 5

(what timezone is that?). But I didn't modify it on that date.


What I'd really like to have is a complete listing of all the MODIFICATIONS to my profile, with fine-granularity timestamps and IP addrs, and before-and-after diffs if possible (just the HTTP POST msg would be enough, if you keep that level of logs). I suspect the guilty edit was the most recent one, on Mar 5, but there may have been others (perhaps adjustments until the hacker got it just the way they wanted it).

As further evidence, please take a look at the AddrLookup.png attachment. That is a snippet from the "Member IP Address Lookup Tool" you sent me. As you can see, somebody at IP addr 98.110.163.143 ("dig -x" puts it at Verizon in Boston, MA, which just happens to be my ISP too, sigh) took an uncommon interest in my LinkedIn profile in the Feb-Mar timeframe. And it wasn't me. Is it possible to get finer-granularity timestamps for this Addr Lookup info? There was a visit on Mar 5, and I suspect that's where the hack came from (notice the 19 hits on Feb 6, perhaps password-guessing?), but I need more proof in order to be certain.

Thanks again, Christian, and I hope to be hearing from you soon.

►Attachment "Profile.png" was the screenshot already included at Section 32.4, hence not included again here.◄

►Attachment "ActivityLog.png":◄

► Activity Log	
Interface Locale:	en_US
Language:	English
Company:	EMC
Network size:	122 - Connection Control
Active jobs:	0 - View Jobs
Available Individual Job Credits:	0 - Job Credits Control
Generation number:	1002
Inviter:	Fred Dalrymple
Join date:	2004-02-10 10:14:13.0 (IP: Not Stored)
Last login date:	2012-05-25 01:14:52.0
Last check time:	2012-05-28 11:39:31.0
Modified date:	2012-03-05 22:23:45.562878
Account status:	Active
Feedback score:	 New
Premium Badge Displayed:	false
Jobseeker Badge Displayed:	false
Openlink Badge Displayed:	false

►Attachment “AddrLookup.png”:◄

219543	98.110.163.143	3/7/2012	1
219543	64.196.253.34	3/30/2012	1
219543	98.110.163.143	3/24/2012	1
219543	98.110.163.143	3/22/2012	1
219543	98.110.163.143	3/21/2012	1
219543	98.110.163.143	3/20/2012	1
219543	98.110.163.143	3/18/2012	3
219543	98.110.163.143	3/14/2012	2
219543	98.110.163.143	3/12/2012	1
219543	98.110.163.143	3/11/2012	1
219543	98.110.163.143	3/10/2012	2
219543	98.110.163.143	3/9/2012	2
219543	98.110.163.143	3/8/2012	1
219543	98.110.163.143	3/7/2012	2
219543	98.110.163.143	3/6/2012	2
219543	98.110.163.143	3/5/2012	2
219543	98.110.163.143	3/4/2012	1
219543	98.110.163.143	3/3/2012	2
219543	98.110.163.143	3/1/2012	4
219543	98.110.163.143	2/28/2012	2
219543	98.110.163.143	2/27/2012	2
219543	98.110.163.143	2/25/2012	2
219543	98.110.163.143	2/24/2012	2
219543	98.110.163.143	2/23/2012	2
219543	98.110.163.143	2/22/2012	1
219543	98.110.163.143	2/20/2012	1
219543	98.110.163.143	2/19/2012	1
219543	98.110.163.143	2/18/2012	1
219543	98.110.163.143	2/17/2012	3
219543	98.110.163.143	2/16/2012	3
219543	98.110.163.143	2/13/2012	1
219543	98.110.163.143	2/12/2012	2
219543	98.110.163.143	2/9/2012	5
219543	98.110.163.143	2/6/2012	19
219543	173.76.180.67	1/24/2012	5
219543	173.76.180.67	1/10/2012	12

- From: Christian Lee
To: Walter Tuvell
Date: 06/04/2012 04:25 PM
Subject: RE: Thanks for the help so far

Thank you for writing to LinkedIn. However, LinkedIn has already provided information to you to the extent that it is available, and the additional information you seek is either inaccessible or unavailable through our standard tools.

- From: Walter Tuvell
To: Christian Lee
Date: 06/04/2012 07:26 PM
Subject: RE: Thanks for the help so far

Thank you, Christian, but can you please tell me what "inaccessible or unavailable through our standard tools" really means? Is there a possibility that there exist non-standard tools or procedures to retrieve the information?

Would, say, some kind of legal process help? And if so, exactly what kind of process? I would guess you probably need to keep some detailed archives in long-term storage, as a matter of due-diligence. If, for example, LinkedIn itself were being sued, there is probably a legal requirement for data-retention of a least a year. As I've said, I have no quarrel with LinkedIn, and I don't want to get into an adversarial stance with LinkedIn, but if there is some kind of "friendly" or "neutral" mechanism available, I'd want to pursue it.

This is extremely important to me. Please let me know if anything is available.

- ►Public disclosure of security breaches at LinkedIn.◄

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LinkedIn Class Action Complaint Over Password Leak

By Sean Patterson June 18, 2012 Leave a Comment

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As expected for a security breach of this magnitude, a class action lawsuit has begun against LinkedIn regarding its recently leaked passwords. The action, which has been filed with the U.S. District Court in Northern California, claims LinkedIn failed to "properly safeguard its users' digitally stored personally identifiable information, including e-mail addresses, passwords, and login credentials"



The plaintiff in the e-filed court document is Katie Szyrka, a senior associate at a Chicago real estate firm. She has been a LinkedIn member since 2010, and also paid for an upgraded premium account. She claims that LinkedIn failed to adequately protect users with "basic industry standard encryption methods." By this, the plaintiff means LinkedIn should have been salting its password hashes. These claims are made in light of LinkedIn's privacy policy, which states that "All information that you provide will be protected with industry standard protocols and technology."

While salting and re-hashing passwords certainly is a good security practice, it will be interesting to see if the plaintiff's lawyers can manage to demonstrate that it is an industry standard. The fact that both eHarmony and Last.fm were also included in the password leak would seem to be evidence that salting passwords before hashing is not "standard," even if it should be.

One interesting claim made in the lawsuit is that the password hash was originally stolen from LinkedIn by a hacker using an SQL injection attack. LinkedIn has never officially stated how the passwords were originally leaked. If LinkedIn did leave itself open to SQL injection, it might be a factor more likely way to prove that LinkedIn did not live up to its policy standards, and therefore was in breach of contract. Still, LinkedIn maintains that no unauthorized access resulted from the leak, meaning that an award for damages seems unlikely. The lawsuit, though, also asks for an injunction against LinkedIn, forcing it to better protect its members' private data.

The court document can be read as a PDF on the Courthouse News website. The entire debacle started on June 6, when it was discovered that over 6.4 million LinkedIn passwords were leaked to a hash cracking website. LinkedIn responded that same day by deactivating member accounts associated with the leaked passwords and emailing members with information on how to reset their passwords. In the following week it was revealed that some of the leaked passwords also belonged to Last.fm and eHarmony.

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■ From: Walter Tuvell
To: Christian Lee
Date: 06/30/2012 08:42 AM
Subject: Fwd: Re: Thanks for the help so far

Christian, I last wrote to you on June 4 (included below). You never replied to me. In the meantime, LinkedIn's mishandling of passwords came to light publicly, so I cut you some slack, figuring you had bigger problems to handle.

But today, remarkably, I tried logging in to my LinkedIn account (for the purpose of looking up some information a LinkedIn contact of mine) -- and I was told LinkedIn was FORCING me to change my password! See attached screenshot and follow-up email.

THIS IS UNACCEPTABLE! Specifically, I have informed you that my LinkedIn account has been HACKED, and asked for your help. You were forthcoming with some information, but unforthcoming with other information that I believe you have in your possession, and which I need for my legal case. On the basis of the information I have available to me, it is my understanding that I NEED TO PRESERVE MY LINKEDIN ACCOUNT/PROFILE IN ITS CURRENT STATE (for example, to preserve the current change-timestamp on my profile). By the present password-change action LinkedIn is FORCING upon me, you are FORCING ME TO DESTROY LEGALLY RELEVANT INFORMATION. That is unacceptable.

Therefore, I hereby renew my request to you to forward to me ALL information you have about my account, and specifically ALL RECORDS YOU HAVE, ANYWHERE (ESPECIALLY HISTORICAL LOGS), CONCERNING CHANGES TO MY ACCOUNT. Please see the previous emails in this thread to refresh your memory concerning what I'm talking about.

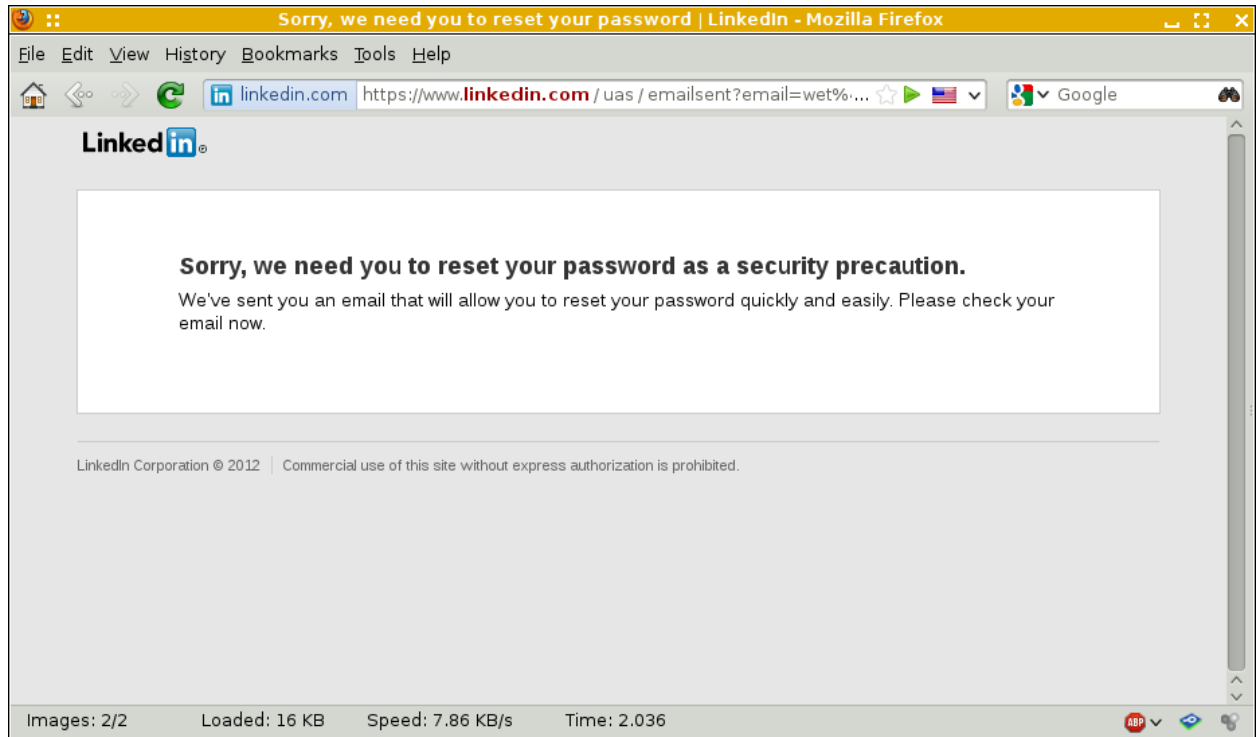
Finally, I HEREBY PUT YOU/LINKEDIN ON NOTICE THAT YOU *MUST* PRESERVE ALL INFORMATION YOU HAVE ABOUT MY ACCOUNT/PROFILE, ESPECIALLY HISTORICAL LOGS. That's because I am in-process of legal action (currently against another company as I've explained, but I will obtain legal process against LinkedIn if necessary). I remind you that it is ILLEGAL for LinkedIn to destroy any information based upon the present NOTICE TO YOU IN CONTEMPLATION OF LEGAL ACTION.

Please don't force me to actually take legal action against LinkedIn. I don't want to do that, and you already have enough problems with your password mishandling snafu. I merely want to get a copy of all information about all modifications to my account/profile that you have in your possession, and to which I AM ENTITLED, by LinkedIn's own terms of contract.

I am so entitled because your own User Agreement states (in relevant part, annotations added): "You [not LinkedIn] own the information you provide LinkedIn under this Agreement ... It is your responsibility [not LinkedIn's] to keep your LinkedIn profile information accurate and updated." What is clear at this point is that LINKEDIN (WHETHER IN CONSPIRACY WITH OTHERS, OR NEGLIGENTLY), NOT

ME, has modified or allowed to be modified my profile information, without my permission. Please comply promptly with my lawful request to figure out exactly who/when/what/etc. has hacked my LinkedIn account/profile. You could use some good publicity for a change.

►Attachment: *LinkedIn-ForcePasswordChange.png*.◄



- From: Christian Lee
To: Walter Tuvell
Date: 07/05/2012 5:59 PM
Subject: RE: Re: Thanks for the help so far

Please give me a call at the number below or provide a number where I can reach you.

- From: Walter Tuvell
To: Christian Lee
Date: 07/05/2012 08:25 PM
Subject: Re: Thanks for the help so far.

Thank you. I will plan to call you tomorrow.

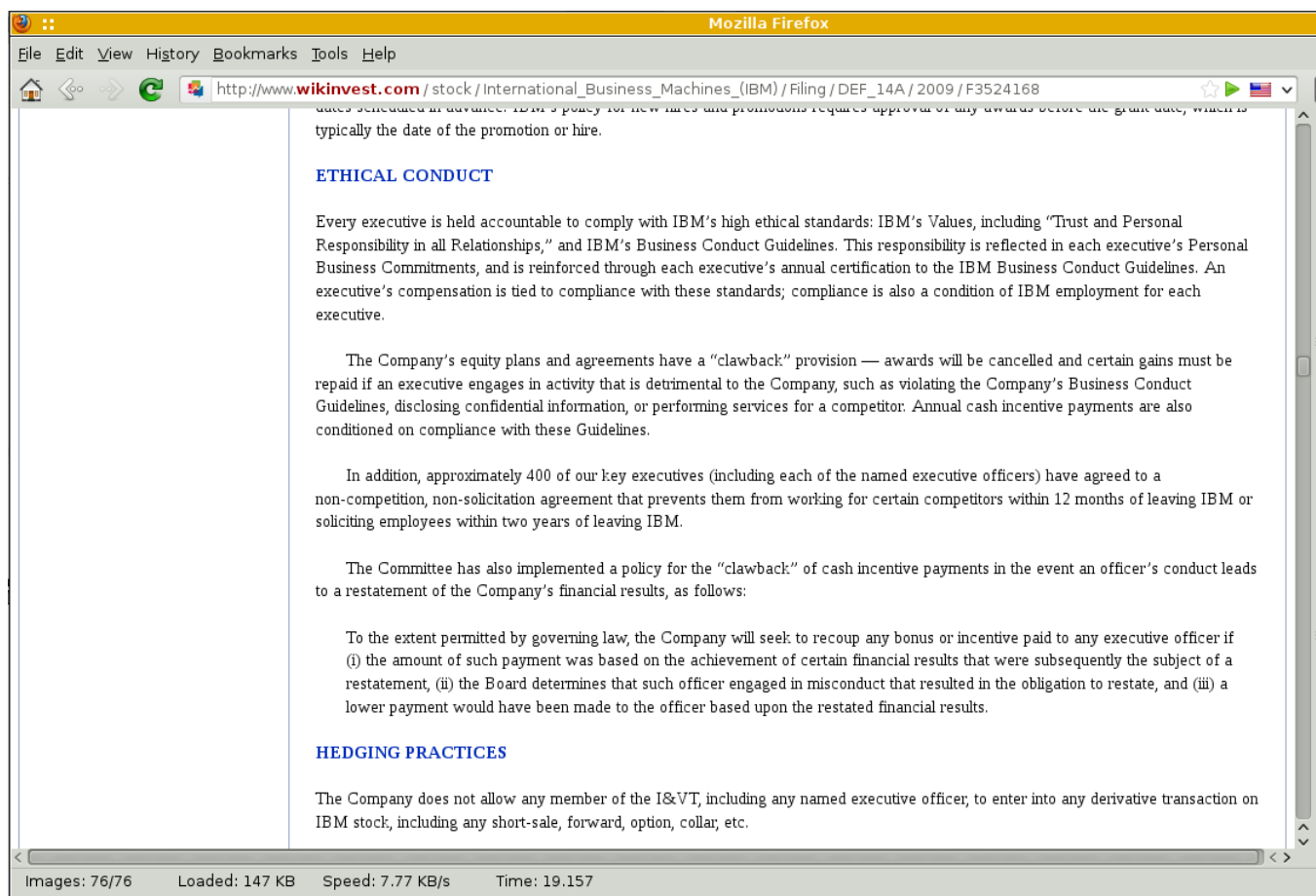
FYI, my cell is 781-475-7254.

BB BCG Vs. Manipulation Of Financial Markets

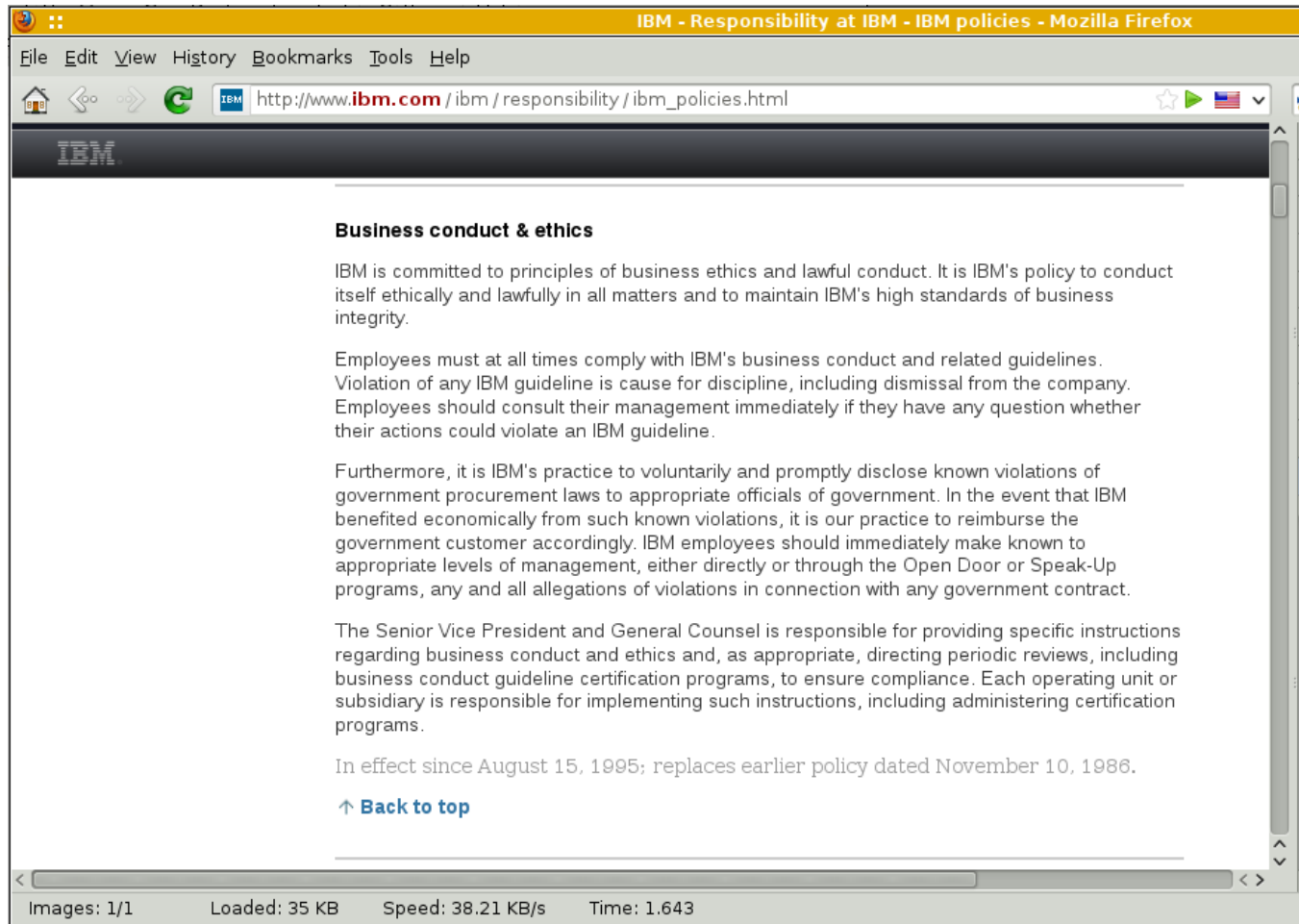
BB.a Ethical Conduct Vs. SEC Filing

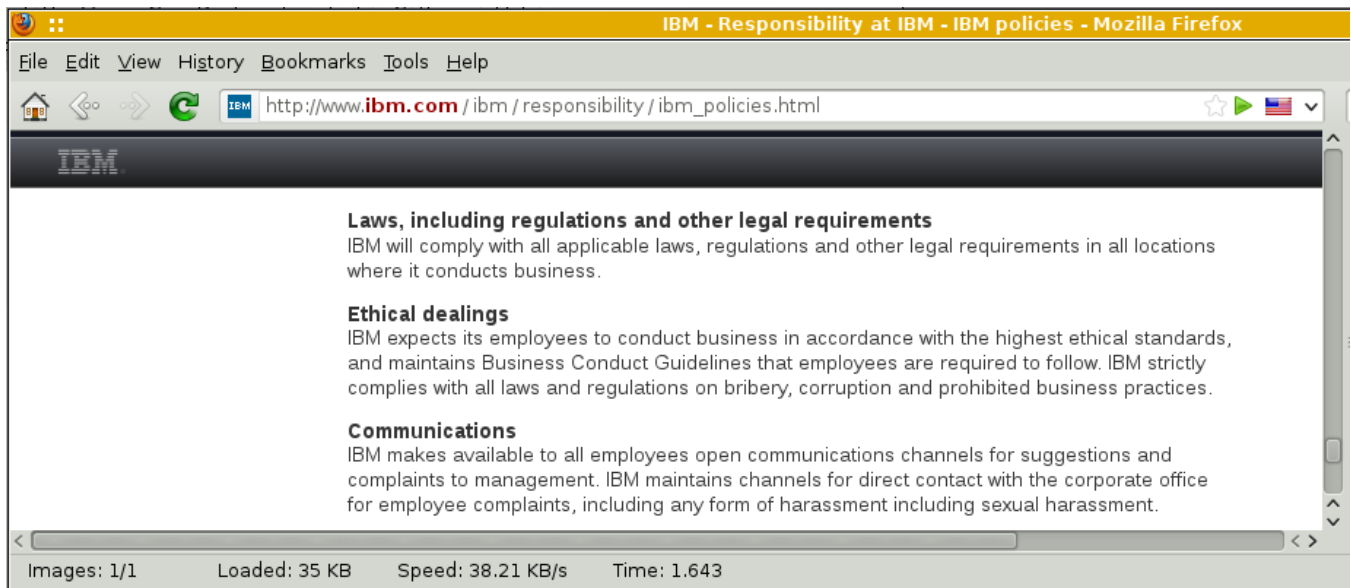
► Screenshot concerning Ethical Conduct from 2009 IBM SEC filing (URL is shown in browser).

Lest anyone think such statements remain “buried in SEC minutae, invisible to investors”, we note this very same Ethical Conduct excerpt is promimemently published separately at [http://www.wikinvest.com/stock/International_Business_Machines_\(IBM\)/Ethical_Conduct](http://www.wikinvest.com/stock/International_Business_Machines_(IBM)/Ethical_Conduct).◄



BB.b Pretended Corporate Responsibility Policies





BB.c IBM Wrote The Book On Corporate Deception

►Screenshot describing Book, and excerpt (the Book's Appendix J, p. 507).◄

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Appendix J

Example of a Code of Business Conduct— Some Broad Guidelines¹

A LETTER FROM THE CHAIRMAN

Dear Colleague:

Recent high-profile corporate scandals have damaged investor confidence in public companies. Fallout from these scandals have included lawsuits, bankruptcies and some of the most wide-ranging corporate governance legislation ever.

It is important to remember that a strong value system based on integrity and accountability has always been at the core of IBM's existence. We do not pay lip service to ethics; it's part of our DNA. The IBM Business Conduct Guidelines are about the combined principles and standards of behavior that make IBM one of the most respected and trusted corporations in the world. This document outlines IBM's legal requirements and provides guidance for understanding and adhering to our business values.

Ethical behavior is important in its own right. However, it is also good for our business because it fosters one of our greatest assets—customer and client trust. So take the time to read these Guidelines. Embrace them. And continue to live by the code of ethical conduct that has served our company so well.

Samuel J. Palmisano
Chief Executive Officer
January 2003

¹International Business Machines, *Business Conduct Guidelines* (New York: IBM, 2003). The material contained in this text excludes pp. 10–28.