

INDIANA CIVIL RIGHTS COMMISSION

PUBLIC MEETING

SEPTEMBER 20, 2019

1:10 p.m. - 3:40 p.m.

ICRC CONFERENCE ROOM

100 NORTH SENATE AVENUE, ROOM N300

INDIANA GOVERNMENT CENTER NORTH

INDIANAPOLIS, INDIANA 46204

APPEARANCES

COMMISSIONERS:

Steven Ramos - Chairperson

Adrienne Slash - Vice-Chairperson

Alpha Blackburn - Commissioner

Holli Harrington - Commissioner

James Jackson - Commissioner

INDIANA CIVIL RIGHTS COMMISSION:

Gregory Wilson - Executive Director

Caroline Stephens Ryker - Administrative Law Judge

Anehita Eromosele - Docket Clerk

1 CHAIR RAMOS: I call to order the meeting of
2 the Indiana Civil Rights Commission. It is Friday,
3 September 20, and I have 1:10 on my clock. We do
4 have a quorum. Thank you, Commissioners, for being
5 here today.

6 We would like to have Announcement of our
7 Agenda, Judge.

8 JUDGE RYKER: Okay. So the first thing that's
9 on the agenda is approval of the previous minutes.
10 The next is the director's report. We have some
11 old business to report on, some appeals. And then
12 in terms of new business, we need to appoint
13 Commissioners to the new appeals.

14 There are a few ALJ decisions and orders
15 before the Commission for review. There is one
16 case for oral argument. The Commission will review
17 the meeting dates for 2019 and allow a time for
18 announcement and public comments.

19 CHAIR RAMOS: Are there any additions or
20 corrections to our agenda?

21 Hearing none, I would like to have a motion to
22 approve the previous minutes.

23 COMMISSIONER BLACKBURN: So moved.

24 COMMISSIONER SLASH: Second.

25 CHAIR RAMOS: Seconded by Commissioner Slash.

1 All those in favor, signify by saying aye.

2 (Chorus of ayes.)

3 CHAIR RAMOS: And we actually can do this and
4 not having to do individual. For those of you
5 here, we've always had somebody on the phone, so
6 this will expedite our meeting today. So thank you
7 all for being here.

8 The next item that's on the agenda is the
9 director's report.

10 DIRECTOR WILSON: Good afternoon,
11 Commissioners. Happy Friday.

12 It's been a good month for us. We just
13 finished meeting our obligations for our EEOC
14 contract; so that means that for this year we
15 exceeded our HUD contract, and we met our EEOC
16 obligations. And that's fantastic for us because,
17 again, that's a big part of our revenue for how we
18 do business here at Indiana Civil Rights
19 Commission.

20 So there is nothing major going on right now.
21 Again, you have the report, so you can kind of get
22 a feel. I won't go through it all because I know
23 we have a long meeting with oral arguments and
24 other things here today. But, anyway, you can just
25 kind of take a look at it.

1 We just, I think the other big thing is we
2 just hired, well, actually, we're going through the
3 review process, but we actually have made an offer
4 to a new External Affairs Director. So that brings
5 a lot of experience to the table.

6 So as soon as that's confirmed and get their
7 background checks, then we'll see how that goes
8 from there.

9 Only big thing for us is end of the year
10 Circle City Classic, the parade, and Sport Expo and
11 the Torch Bearer Award. I think you have won the
12 Torch Bearer Award before.

13 COMMISSIONER BLACKBURN: Yes.

14 DIRECTOR WILSON: So that's going on for us
15 next week, and pretty much we're doing wrap-up. We
16 are just looking at the year. We have our
17 end-of-the-year retreat and plan for the 2020.

18 CHAIR RAMOS: Okay.

19 COMMISSIONER SLASH: That's a lot.

20 DIRECTOR WILSON: Yeah. Well, the big thing
21 for us is meeting our obligations with our federal
22 partners, and for the second year in a row
23 exceeding the HUD. That's a big deal. That means
24 that we've, our staff has done a great job. I
25 think earlier this year we rewarded our staff for

1 the exceptional work; so we're very happy with
2 what's going on here at Indiana Civil Rights.

3 CHAIR RAMOS: Congratulations. Good job. I
4 notice that we do have a financial report, so thank
5 you for that, and I don't know if everybody got a
6 chance to look at that.

7 DIRECTOR WILSON: That's basically revenue
8 that we get from the State and from the HUD
9 contracts.

10 CHAIR RAMOS: And I notice that you have
11 anticipations or projections from legislative
12 appropriations, and then, as you mentioned, the
13 revenue flows from HUD and EEOC, which you'll find
14 out shortly.

15 DIRECTOR WILSON: Yes, once they release it.

16 CHAIR RAMOS: As A couple of suggestions in
17 this, if we can have a breakdown on revenues that
18 you have shown there, but also one that just kind
19 of puts it into the different categories as far as
20 how you spend the money; so part of it goes to the
21 people, part of it goes to IT. Mostly it's stuff
22 you've done in those reports anyway.

23 DIRECTOR WILSON: You know, you don't actually
24 have oversight over budget.

25 CHAIR RAMOS: We have oversight over the

1 Commission.

2 DIRECTOR WILSON: The Commission is separate
3 though. Actually, we can have a conversation after
4 this.

5 CHAIR RAMOS: We can do that. It's helpful
6 from our role in how all the, where it all goes,
7 so. But we can talk on it.

8 COMMISSIONER BLACKBURN: But this is a good
9 start.

10 CHAIR RAMOS: Yes, it is.

11 Any questions for Executive Director?

12 Okay. We will move on to old business. We
13 have four cases that were appointed for appeal and
14 review. The first case is the case of Victoria
15 Johnson versus Anderson Housing Authority.

16 And in our last meeting Ms. Johnson provided
17 some additional information. We tried to convert
18 that into a readable format or an audio format, as
19 it turns out. There were some struggles with that,
20 so we do have it now in a format that I can read,
21 so I'm just going to extend that decision until the
22 next meeting.

23 The next item on the list is Bessie Russell
24 versus Quicken Loans. Vice-Chair Slash.

25 COMMISSIONER SLASH: Uphold. I move that we

1 uphold that, the director's finding.

2 CHAIR RAMOS: Any motions?

3 COMMISSIONER HARRINGTON: Second.

4 CHAIR RAMOS: So you make the suggestion. I
5 need a motion to approve and then a second.

6 COMMISSIONER HARRINGTON: So I move that we
7 accept the recommendation.

8 CHAIR RAMOS: I need a second.

9 COMMISSIONER JACKSON: Second.

10 CHAIR RAMOS: All those in favor, signify by
11 saying aye.

12 (Chorus of ayes.)

13 CHAIR RAMOS: The motion carries.

14 The next item is Brian Rowlette versus Wilson
15 School Apartments. Commissioner Harrington.

16 COMMISSIONER HARRINGTON: I also recommend
17 that we uphold the no probable cause finding.

18 CHAIR RAMOS: Motion to approve?

19 COMMISSIONER SLASH: So move.

20 COMMISSIONER JACKSON: Second.

21 CHAIR RAMOS: All those in favor, signify by
22 saying aye.

23 (Chorus of ayes.)

24 CHAIR RAMOS: The motion carries.

25 The next case is Michael Coello versus Crown

1 Point Police. Commissioner Blackburn.

2 COMMISSIONER BLACKBURN: In the case of
3 Michael Coello versus Crown Point Police, I move we
4 accept the Deputy Director's finding of no probable
5 cause.

6 CHAIR RAMOS: I need a motion to approve.

7 COMMISSIONER SLASH: So move.

8 CHAIR RAMOS: Second?

9 COMMISSIONER HARRINGTON: Second.

10 CHAIR RAMOS: All those in favor, signify by
11 saying aye.

12 (Chorus of ayes.)

13 CHAIR RAMOS: Motion carries.

14 Item VI on the agenda is new business, so
15 appointments to complainants' appeals as follows:

16 For Carleana Barnes versus McDonald's Store, I
17 will take that case.

18 The case of Develan Bland versus OrthoIndy
19 Urgent Care, Commissioner Slash.

20 For Hassanin Aly versus Steak 'n Shake,
21 Commissioner Jackson.

22 For Jason Wineke versus Hamilton Center,
23 Commissioner Harrington.

24 For Lisa Schneider versus Concert Golf
25 Partners, Commissioner Blackburn.

1 And the last case is James Clark versus the
2 BMV, and I will take that case as well.

3 Are there any questions or concerns on any of
4 those, Commissioners?

5 Hearing none, we will move to the next item.
6 This is the review of the ALJ decisions and orders.
7 Judge Ryker.

8 JUDGE RYKER: There are four orders before the
9 Commission for review. You received the record of
10 all of these from the docket clerk already in
11 advance of this meeting.

12 The first is ICRC versus Drummons Management.
13 And this was a dismissal after the Notice of
14 Election was filed.

15 CHAIR RAMOS: Would you like to explain the
16 Notice of Election process?

17 JUDGE RYKER: A Notice of Election is where
18 the parties have the opportunity to move a case to
19 State court. This was a Housing case. Only one
20 party had to file a motion in order for it to carry
21 the case in the State court. And, again, that is
22 included in the different documents that you have
23 before you today.

24 CHAIR RAMOS: Are there any questions? If
25 not, we need a motion to approve this dismissal.

1 COMMISSIONER SLASH: So move.

2 COMMISSIONER BLACKBURN: Second.

3 CHAIR RAMOS: Those in favor, signify by
4 saying aye.

5 (Chorus of ayes.)

6 CHAIR RAMOS: The motion carries.

7 JUDGE RYKER: The second decision by the ALJ
8 that is before the Commission is Lymon versus UAW
9 Local Union. And this was a case in which Chair
10 Ramos has set a briefing deadline as well as an
11 oral argument deadline, and I want to make the
12 Commission aware of those dates.

13 The briefing deadline is October 9, and the
14 oral arguments are currently scheduled for
15 October 18.

16 CHAIR RAMOS: Thank you.

17 JUDGE RYKER: The third case before the
18 Commission for review is Bowman versus Tiki Bob's
19 Night Club. This was a case that has been
20 dismissed after the parties requested the dismissal
21 jointly.

22 CHAIR RAMOS: Are there any questions on this
23 case? If not, I need a motion to approve the
24 dismissal.

25 COMMISSIONER SLASH: So moved.

1 COMMISSIONER BLACKBURN: Second.

2 CHAIR RAMOS: All those in favor, signify by
3 saying aye.

4 (Chorus of ayes.)

5 CHAIR RAMOS: The motion carries.

6 JUDGE RYKER: The final case before the
7 Commission is HE versus Belterra Casino. In that
8 case there are oral arguments scheduled here today.
9 Again, the docket clerk has emailed the record to
10 you in advance of today's meeting, and there are
11 objections from both parties, and the parties will
12 present oral arguments.

13 CHAIR RAMOS: Thank you, Judge Ryker. We will
14 now move to the oral arguments.

15 I'll provide some background, at least from
16 the perspective of what we need to do. We do have
17 a translator. Is that person here?

18 JUDGE RYKER: So that's something that I will
19 get set up here, if we could take a brief pause for
20 me to get that interpreter on the phone.

21 I will let the Commission know because I
22 issued this decision, I will step out while the
23 parties are arguing to keep everything objective
24 and neutral. Our docket clerk will keep time today
25 for whatever amounts are set by the Commission. I

1 request just a brief recess in order to get the
2 interpreter on the line.

3 CHAIR RAMOS: Okay. We are off the record.

4 (A recess was taken.)

5 (The following record is translated into
6 Cantonese by the interpreter appearing via
7 telephone.)

8 CHAIR RAMOS: We'll call back to order the
9 Commissioner meeting. We have in front of us now
10 the oral arguments in the case for HE versus
11 Belterra Casino.

12 THE INTERPRETER: I'm sorry to interject. I
13 can hardly hear.

14 CHAIR RAMOS: That doesn't stretch any
15 further? Do you have a volume on your phone that
16 you can turn up?

17 THE INTERPRETER: I already turned it to the
18 maximum volume.

19 CHAIR RAMOS: I'll try and speak extremely
20 loud, if I can. Can you hear me okay?

21 THE INTERPRETER: So far, yes.

22 CHAIR RAMOS: All right. So we've called the
23 meeting to order, and the procedure that we will
24 follow is to, we'll give each of the counselors 30
25 minutes of time to present their arguments, and you

1 need to translate as we kind of go along.

2 So each side will have 30 minutes for their
3 case, and then they'll have five minutes for
4 rebuttal.

5 THE INTERPRETER: Five minutes for rebuttal,
6 did you say that?

7 CHAIR RAMOS: Yes. Well, probably ten minutes
8 because of the translation.

9 Before I begin, I actually need to swear you
10 in as a translator. So I need you to, if you can,
11 I will officially swear you in. I need you to
12 identify your name, first and last name, and your
13 identification.

14 THE INTERPRETER: Okay. Chair, we don't give
15 our last name, but I can tell you my first name and
16 the first initial of my last name and my ID number.
17 My first name is Carmen, "C" as in Charlie, "A" as
18 in alpha, "R" as in Romeo, "M" as in Mike, "E" as
19 in echo, "N" as in November. And the first initial
20 of my last name is "H" as in hotel. My interpreter
21 ID number is CHCH, Charlie Hotel Charlie Hotel.

22 CHAIR RAMOS: Okay. If you would, please,
23 raise your right hand. Do you affirm under
24 penalties of perjury that you will justly, truly,
25 and impartially interpret to the witness the oath

1 about which is to be administered to him or her,
2 the questions that may be asked him or her, and the
3 answers that he or she shall give to the questions
4 relative to the cause now under consideration
5 before this agency?

6 THE INTERPRETER: Yes, I do.

7 CHAIR RAMOS: Thank you. All right. With
8 that, we shall begin.

9 We will begin with the complainant for 15
10 minutes, or for 30 minutes, and you can do the
11 translation.

12 THE INTERPRETER: Question. This is
13 consecutive interpretation; right? You say one
14 sentence, I interpret one sentence; right?

15 CHAIR RAMOS: Yes. Well, it might be a couple
16 of sentences.

17 THE INTERPRETER: So please give me the time.
18 Okay? So go ahead, please.

19 CHAIR RAMOS: We will also have a time person
20 that's monitoring, just so you know, when 25
21 minutes are up.

22 COMMISSIONER HARRINGTON: Question. How will
23 she know when to speak?

24 THE INTERPRETER: I'm sorry. I cannot make
25 sense of what you said.

1 CHAIR RAMOS: I think the question is how will
2 you know when to translate. And I would ask that
3 you just have a pause, and then that will provide
4 the opportunity for translation.

5 Are you comfortable with that, counsel?

6 MR. PETTYGROVE: Yes. Past experience
7 dictates I may forget. But with your reminder,
8 we'll get through it.

9 MR. HEALY: We're talking one sentence at a
10 time?

11 CHAIR RAMOS: I would do a couple of
12 sentences. We'll see how it goes.

13 MR. HEALY: A few.

14 CHAIR RAMOS: I would also obviously get to
15 the key points of your discussions.

16 All right. We will begin, Counsel Healy.

17 MR. HEALY: Thank you, Mr. Chairman, and
18 fellow Commissioners.

19 I want to first thank Judge Ryker for writing
20 a very precise, thorough, legally sufficient
21 decision in this case. She placed a great deal of
22 emphasis upon the issues that we are to discuss
23 today. I think that she should be commended for
24 what she has done, and I have no issue with her
25 finding of disability discrimination that was

1 inured against Belterra.

2 I only had a few objections that I made with
3 respect to the damages portion of the decision, but
4 I will get to that during my presentation.

5 For now I wish to address the elements of the
6 disability discrimination case because that is what
7 respondent is contending in its own objections.
8 They are challenging, I should say, that particular
9 finding.

10 Yfen is a Chinese National who recently, in
11 2009, moved to Indiana and was hired by Belterra in
12 2010 as a guestroom attendant. Her responsibility
13 was for cleaning hotel guestrooms, but she injured
14 her back in April of 2012 while making a bed.

15 Yfen was restricted by her doctor to lifting
16 not more than ten pounds. As a result, Belterra
17 placed her in what was called transition laundry
18 room attendant services. However, there was more
19 frequent and heavier lifting performed in the
20 laundry room attendant position than in the
21 previous guestroom attendant position.

22 Not surprisingly, Yfen complained to the
23 supervisors that the pushing of the laundry cart
24 was overly difficult, and she asked to be
25 reassigned. The reassignment did not take place,

1 and on April 11, 2013, the doctor issued a
2 permanent restriction to Yfen.

3 Within 15 days Belterra sent Yfen a letter,
4 requesting a meeting. At the meeting Yfen was
5 given only a two-page list of available jobs that
6 she could apply for and told she would have 30 days
7 in which to do so. She was told she had to work
8 with the HR department within 30 days, and she was
9 given a telephone number to call and was told she
10 would face termination if she did not call.

11 Shortly after, Yfen called the safety manager
12 at her direct private phone number, and the call
13 time lasted over 16 minutes. She left voice mail
14 messages for her to call both the safety manager,
15 her supervisor, and also the HR representative.
16 All three were asked by Yfen to call her back.

17 THE INTERPRETER: Repeat that, please.

18 MR. HEALY: She made phone calls.

19 THE INTERPRETER: Who is she?

20 MR. HEALY: Yfen made calls to three persons.
21 To Smela, the safety manager, and to her
22 supervisor, and to the HR person. And none of
23 these three ever returned her phone call, and thus
24 she was terminated by Belterra for failing to
25 contact them within 30 days.

1 Judge Ryker determined that Yfen was able to
2 perform the essential functions of at least one of
3 the jobs that she was interested in, that of
4 barista.

5 THE INTERPRETER: Barista? Did you say
6 barista?

7 MR. HEALY: Barista, yes, serving coffee.

8 THE INTERPRETER: Yeah, I know.

9 MR. HEALY: The job description that we found
10 and was submitted as an exhibit showed that bending
11 was required one to two hours a day and lifting one
12 to two hours per day, which the judge felt could be
13 accommodated.

14 Now, in respondent's brief they cite cases
15 trying to show that it's up to the complainant to
16 request and to prove a needed reasonable
17 accommodation. Those cases are inapposite to the
18 present case because here there wasn't even a job
19 offer made. How do you ask for an accommodation,
20 if you're not given any information at all about
21 the job or its requirements or its duties?

22 Those job duties that were contained in
23 Complainant's Exhibit 22 for each of the jobs were
24 never shown to the complainant. I had to request
25 them many months after the fact during discovery.

1 Belterra is placing Yfen in her Catch-22. You
2 have to tell us what accommodation you need, but
3 we're not going to tell you what the job entails or
4 its duties, requirements, or essential functions.
5 That's not consistent with the rules under the ADA.

6 Judge Ryker, in her finding-of-fact 33, said
7 correctly that respondent's attempted accommodation
8 was no accommodation at all. The case law that
9 Judge Ryker cited states that it's not an
10 employee's responsibility to repeatedly prod a
11 reticent employer.

12 Respondent's 30-day application period and
13 vague invitation to provide assistance offered
14 complainant nothing beyond what she could have
15 achieved on her own by simply applying for new
16 jobs.

17 THE INTERPRETER: Repeat that, please.

18 MR. HEALY: Yes. Respondent's application
19 period and vague invitation to provide assistance
20 offered complainant nothing beyond what she could
21 have achieved on her own by applying for new jobs.

22 Belterra did not explain why it did not extend
23 complainant's 30-day period for a reasonable period
24 to allow for possible future compatible vacancies.
25 This is not consistent with the ADA, and it is a

1 violation of the Indiana Civil Rights Law.

2 None of the cases that respondent cites in its
3 brief has a fact situation where a complainant is
4 offered no job whatsoever.

5 Now, with respect to the issue of damages,
6 this is the point of contention we make. The judge
7 states that beginning in August 2014 she began
8 seeking part-time work only. Complainant's Exhibit
9 10 lists a large number of employers to which she
10 applied for full-time work. The transcript
11 contains some vagaries about this issue, but
12 complainant is here today and could answer the
13 simple question as to whether or not she looked for
14 full-time or part-time positions.

15 The complainant has also objected to the
16 finding that denies front pay to the complainant.
17 We are all in agreement that front pay is an
18 equitable remedy that can be awarded as future pay
19 when reinstatement is not appropriate and
20 compensates an employee for expected wage losses in
21 the future.

22 Unfortunately, the ALJ cited federal law in
23 making her determination that the complainant needs
24 to provide information necessary for her to
25 calculate the front pay award. Judge Ryker is

1 incorrect because it is Indiana State law, not
2 federal law, which controls the interest rate.
3 There is no clear federal authority regarding an
4 actual discount rate under the Civil Rights Law.

5 According to the Gary Community School case,
6 which you have, we look at several factors,
7 including the length of employment, permanency of
8 the position, nature of work, age and condition of
9 employee, possible consolidation, life expectancy.

10 Go ahead. Hello? Did we lose the connection?
11 We may have lost the connection. Translator, can
12 you translate?

13 (Discussion outside the record.)

14 MR. HEALY: The length of prior employment,
15 permanency of position, availability of other work
16 opportunities, employee's duty to mitigate,
17 possible increase in salaries and methods to award
18 net present value.

19 THE INTERPRETER: Okay. Okay. Okay. Please,
20 tell me those factors three at a time, please.

21 MR. HEALY: All right. Length of prior
22 employment, permanency of position, nature of work.

23 CHAIR RAMOS: Can you hear, translator?

24 MR. HEALY: Can you hear me?

25 THE INTERPRETER: Hello.

1 CHAIR RAMOS: Can you hear us okay? We may
2 have to hang up and redial.

3 THE INTERPRETER: Are you still there? Can
4 you hear me? Hello.

5 MR. HEALY: I'm here. Can you hear me?

6 THE INTERPRETER: Are you still there?

7 CHAIR RAMOS: We'll pause.

8 (A recess was taken.)

9 THE INTERPRETER: Hi. I'm Carmen again. I'm
10 not sure what went wrong, but I'm still here and
11 I'm ready to continue.

12 MR. HEALY: Your Honor, I lost the connection
13 at approximately 1:56 p.m. Would you please take
14 note of that.

15 CHAIR RAMOS: How much time does that leave?

16 MR. HEALY: It's now approximately 2:05, so I
17 think we're closer to ten minutes there.

18 CHAIR RAMOS: I'm fine with ten.

19 MR. HEALY: Thank you.

20 In the case of McKnight versus General Motors,
21 the Court invited the parties to file briefs on the
22 issue of front pay. The appellate Court denied
23 front pay based on the employment history and
24 speculative nature of the award.

25 In this case the award is not speculative

1 because we used the same five or six year period
2 that Yfen spent looking for work after her time
3 that she was terminated.

4 THE OPERATOR: Interpreter has left the
5 conference. You are the only person in the
6 conference. Interpreter has joined the conference.

7 THE INTERPRETER: Okay.

8 MR. HEALY: The Indiana State interest rate is
9 8 percent as a default. This is under Indiana Code
10 Title 24, and says that if we don't provide a
11 statutory rate by contract, it goes to 8 percent.
12 Under the State law it was not necessary for the
13 complainant to provide an equation prior to the
14 close of the hearing.

15 In this case the judge chose to use a
16 different interest rate, which is closer to the
17 federal rate. In electing to use it, the judge
18 already determined the applicable interest rate to
19 use for the rest of the calculations.

20 The ICRC, therefore, has options. If you take
21 the federal interest rate, if you think it is too
22 low and the result is a front pay award that's too
23 high, you can use the default interest rate of
24 8 percent. The matter should properly, therefore,
25 be remanded back to the administrative law judge

1 for proper calculations.

2 THE OPERATOR: Interpreter has left the
3 conference. You are the only person in the
4 conference. Interpreter has joined the conference.

5 THE INTERPRETER: I'm not sure what was going
6 on. Okay.

7 MR. HEALY: This was actually done in the
8 Indiana Gary case in which the trial court
9 requested additional briefing on the front pay
10 award and parties submitted additional materials.

11 We are not seeking a windfall amount, but we
12 are asking that the front pay award be considered
13 in the interest of justice as part of the make
14 whole remedy to the complainant.

15 Our front pay calculations were presented to
16 the administrative law judge at the conclusion of
17 the hearing. We have no objection to remanding it
18 for a proper entry regarding the appropriate
19 discounted rate.

20 Thank you very much.

21 CHAIR RAMOS: Thank you, Counsel Healy. We
22 will hear now, please identify yourself and your
23 role, please.

24 MR. PETTYGROVE: Interpreter, can you hear me
25 okay?

1 THE INTERPRETER: Yes. Good afternoon.

2 MR. PETTYGROVE: Good afternoon. My name is
3 Joseph Pettygrove. I'm with the law firm of
4 Kroger, Gardis & Regas, and I represent the
5 respondent, Belterra Casino Resort. My client and
6 I both appreciate the time and opportunity to
7 further discuss this case.

8 At this point the issues have been narrowed,
9 as the process is designed to do. We're talking
10 about a failure-to-accommodate claim, and more
11 specifically the ALJ's finding that Belterra should
12 have given Ms. Dusan an open barista position at
13 its coffee shop despite her physical limits.

14 THE INTERPRETER: Speak up and then pause,
15 please. Don't give me too much material at a time,
16 please.

17 MR. PETTYGROVE: I will try.

18 THE INTERPRETER: Speak up and pause, please.

19 MR. PETTYGROVE: At this point this is a
20 failure to accommodate. Do you need me to repeat?

21 THE INTERPRETER: Yes, because I did not get
22 what you said.

23 MR. PETTYGROVE: At this point this is a
24 failure-to-accommodate case. Like any
25 accommodation case, the gist of the argument here

1 is that the employer could and should have done
2 more than it did to help the claimant.

3 There is inherent appeal in that argument,
4 because at least in an abstract sense anybody can
5 always do more. Someone can always spend more
6 time, more money, more energy on a project. But
7 the law of accommodations doesn't require employers
8 to exhaust all possibilities. That's an
9 unrealistic standard.

10 The law requires employers to do what's
11 reasonable. And the law measures reasonableness
12 based not on abstract principles or good intention,
13 but on specific facts and evidence in the record.

14 The ALJ found that it would have been
15 reasonable for Belterra to put Ms. Dusan in a
16 barista position despite her restrictions and
17 limitations.

18 THE INTERPRETER: Repeat, that please.

19 MR. PETTYGROVE: The ALJ found that
20 reasonableness required Belterra to place Ms. Dusan
21 in a barista position.

22 COMMISSIONER BLACKBURN: What kind of
23 position?

24 MR. PETTYGROVE: Barista, coffee shop
25 employees.

1 COMMISSIONER BLACKBURN: Thank you.

2 MR. PETTYGROVE: The ALJ's conclusions are
3 based on second guessing Belterra's legitimate
4 nondiscriminatory business standards, and they
5 don't satisfy the plaintiff's burden of proof.

6 THE INTERPRETER: Repeat the sentence, please.

7 MR. PETTYGROVE: I will try. The ALJ's
8 conclusions are not founded on substantial and
9 reliable evidence, but second-guess the company's
10 legitimate nondiscriminatory standards.

11 Briefly, on damages, because I want to spend
12 most of my time talking about why there is no
13 liability in the first place, there is a front pay
14 argument and a back pay argument.

15 Back pay are the wages that Ms. Dusan claims
16 she should have been paid between the date of her
17 termination and the date of your decision, so
18 backwards from the date of your decision. And
19 front pay is the wages she's claiming she should
20 have received from today forward to make up for
21 wages that she won't be making.

22 THE INTERPRETER: I'm sorry. What was the
23 front pay? What is the definition one more time,
24 please?

25 MR. PETTYGROVE: Front pay is supposed to

1 measure lost wages from the date of your decision
2 here forward.

3 THE INTERPRETER: I cannot hear you well.

4 MR. PETTYGROVE: Front pay is supposed to
5 measure the damages from the date of your decision
6 today going forward.

7 The judge discounted her back pay calculation
8 based on her finding that Ms. Dusan limited her job
9 search to part-time work beginning in August of
10 2014. The judge based that conclusion on Exhibit
11 R21.

12 R21 is a plan that was developed by Ms. Dusan
13 with two State of Indiana employees after her
14 separation as part of her efforts to get new
15 employment. She testified that she completed this
16 form with the assistance of those two vocational
17 rehabilitation professionals, as well as her
18 husband, who was with her at the time.

19 THE INTERPRETER: The she is the complainant,
20 yes?

21 MR. PETTYGROVE: Yes, yes.

22 THE INTERPRETER: Who is she?

23 MR. PETTYGROVE: Ms. Dusan.

24 THE INTERPRETER: She is the complainant?

25 MR. PETTYGROVE: Correct.

1 THE INTERPRETER: Okay.

2 MR. HEALY: This is a detailed document,
3 reflecting careful thought, signed by Ms. Dusan,
4 and it says no fewer than five times that as of
5 August of 2014 she was looking for part-time work
6 only.

7 The judge's conclusion is based on specific
8 and reliable evidence. The only suggestion of
9 full-time work search after that date is a
10 collection of fliers from job fairs. And I will
11 rest on our brief, in the interest of time, on the
12 rest of that issue.

13 As to front pay, the law does not calculate it
14 by matching the same amount of time awarded for
15 back pay.

16 THE INTERPRETER: I'm sorry. Is it back pay
17 or front pay?

18 MR. PETTYGROVE: Front pay is not calculated
19 by matching the period of time given for back pay.

20 While complainant was not required to present
21 a formula at the hearing, she was required to
22 present evidence, evidence that lines up with the
23 factors spelled out in the Gary Community School
24 decision.

25 She has the burden of proving that she could

1 keep working for six more years after today by
2 pointing to specific evidence. The reality is she
3 has not worked since April of 2013; so any award of
4 front pay would be speculative.

5 Moving from damages to liability, in the
6 interest of time, there's been a lot of focus on a
7 three-day period, April 26 of 2014, which was a
8 Friday, through April 29, a Monday. Translator?

9 THE INTERPRETER: Repeat that, please. What
10 are those three days for?

11 MR. PETTYGROVE: There has been much focus on
12 the period of time from Friday, April 26, through
13 Monday, April 29.

14 THE INTERPRETER: 2014?

15 MR. PETTYGROVE: Correct.

16 The record is full of quite a bit of evidence
17 showing that Belterra was working with Ms. Dusan's
18 injuries for a full year before that time,
19 coordinating doctors appointments, getting her
20 rides.

21 The record is full of evidence and
22 unchallenged findings that she continued to voice
23 pain, even when management gave her light duty
24 clearly within her worker's comp restrictions.

25 Belterra had been work working with Ms. Dusan

1 during this one-year period through a fairly
2 significant language barrier. It's important to
3 keep that context in mind when thinking about the
4 phone calls that Ms. Dusan insists she made on a
5 Friday and a Monday in April.

6 It's also important to remember, and this is
7 something that did not come up in Commission
8 counsel's presentation, in that final meeting on
9 Friday, the 26th, Ms. Dusan was also told keep
10 reporting to work in your light-duty assignment
11 during this next 30 days.

12 THE INTERPRETER: I'm sorry. I did not hear
13 you.

14 MR. PETTYGROVE: Ms. Dusan was also told in
15 that April 26 meeting to continue reporting to her
16 light-duty assignment for the next 30-day period.

17 She did not do so. There is no dispute about
18 that. She acknowledged that she stopped reporting
19 to work, did not report it, but didn't feel like
20 she could continue coming to work, so she stopped.

21 So with our 20/20 hindsight today, we can
22 forensically look back and see where the
23 communication broke down. But this notion that
24 Belterra just wrote her off, that's not consistent
25 with the facts. Belterra doesn't write employees

1 off. Belterra does make reasonable, even if
2 difficult, business decisions.

3 Now, the law is clear, and I don't understand
4 there to be any dispute, even when the employer is
5 at fault for a breakdown in the interactive
6 process, the employee, pressing a
7 failure-to-accommodate claim, still has the burden
8 of putting forth substantial and reliable evidence
9 that she was qualified for whatever alternative
10 position she claims she should have received.

11 And while Ms. Dusan may have genuinely and
12 with all good intentions believed she could do most
13 of the barista position, the facts and evidence
14 show otherwise.

15 There were two independently dispositive --
16 let me rephrase that. There were two reasons,
17 either of which standing alone show she could not
18 perform the position under the reasonableness
19 standard.

20 One is the language barrier, which has nothing
21 to do with the disability or an accommodation
22 obligation. The second is the lifting restriction.

23 THE INTERPRETER: What was that? Language,
24 and what is the second thing?

25 MR. PETTYGROVE: Lifting restriction.

1 And as I see, I am running short on time. I
2 am going to rest largely on the briefs for these
3 points, but I have just a few more words.

4 Translator?

5 THE INTERPRETER: What was said? I thought
6 you said you want to say something.

7 MR. PETTYGROVE: I do. Would you please
8 translate for Ms. Dusan that I am going to largely
9 rest on our briefs but have just a few more words
10 to say.

11 (Translating.)

12 MR. PETTYGROVE: The law is quite clear that
13 an employer gets to set performance standards for
14 its employees. And the law is equally clear that
15 neither --

16 THE INTERPRETER: Stop, please.

17 MR. PETTYGROVE: Go ahead.

18 (Translating.)

19 MR. PETTYGROVE: -- the HR representative in
20 this case, Tricia McAlpine, who was responsible for
21 helping Ms. Dusan find a new job.

22 THE INTERPRETER: Repeat the name, please.

23 MR. PETTYGROVE: Tricia McAlpine.

24 She testified, based on her experience with
25 Ms. Dusan as an HR representative in the casino

1 industry and as an employee of Belterra, that
2 Ms. Dusan's communication skills were not
3 sufficient for front-of-house positions. We've
4 highlighted in our brief at least five separate
5 sections in Exhibit R21 where her vocational
6 counselors agreed.

7 Absent evidence that the company applied that
8 standard in a discriminatory manner, the case law
9 makes clear that the employer's judgment is
10 entitled to deference.

11 The same is true when it comes to picking
12 which functions of a job are essential functions
13 for disability purposes. In Commission counsel's
14 brief he refers to the Basinth case from the
15 Seventh Circuit.

16 THE INTERPRETER: I'm sorry. Can you repeat
17 that, please?

18 MR. PETTYGROVE: Yes. I'll rephrase.

19 The case referred to by Commission counsel
20 makes this clear. The employer presents evidence
21 of which functions are essential, and the job
22 description, along with Lee Smela's testimony,
23 makes clear that lifting is an essential function
24 for baristas.

25 The case law also makes clear, unless there's

1 evidence that the employer applies those standards
2 differently or doesn't really believe them, the
3 employer's judgment controls.

4 I'll wrap up as simply and bluntly as I can.
5 The ALJ and anybody else may have decided that the
6 complainant's communication skills and lifting
7 abilities were enough for their business, but
8 Belterra legitimately and nondiscriminatorily made
9 the judgment that her abilities did not meet its
10 criteria.

11 Thank you very much for your time and allowing
12 me to move around the room, and I'll end for now
13 with that.

14 CHAIR RAMOS: Before we go into rebuttal, are
15 there questions from the Commissioners?

16 COMMISSIONER BLACKBURN: I have one question.
17 Regarding the reporting for work duty during the
18 30-day period, would someone clarify whether or not
19 she did or should have reported for work during
20 that period.

21 MR. HEALY: Your Honor, the answer to that
22 question --

23 CHAIR RAMOS: Do we want to translate? Did
24 you understand that, translator?

25 THE INTERPRETER: I didn't hear anything at

1 all, to be honest. I'm sorry. I didn't hear
2 anything.

3 CHAIR RAMOS: The question was what was the
4 understanding of the employer in having to report
5 to work during that 30 days.

6 THE INTERPRETER: What is the complainant's
7 understanding of what? I'm sorry.

8 CHAIR RAMOS: Her reporting to work in that
9 30-day period.

10 THE INTERPRETER: Okay. (Translating.)

11 CHAIR RAMOS: That was a question. Do you
12 want to answer that question?

13 MR. HEALY: The answer to the question comes
14 from Respondent's Exhibit No. 11, which I just
15 showed you a copy of. This is an important letter.
16 It was sent to Yfen after the April 26 meeting.

17 There is nothing in that letter which states
18 that Yfen is to report to work at any time after
19 April 26 and before she comes back on May 27. It
20 simply is not in that letter, and Yfen did not
21 testify that she was told that she had to report
22 back to work after April 26.

23 MR. PETTYGROVE: If I may?

24 CHAIR RAMOS: Sure.

25 MR. PETTYGROVE: Exhibit R11 states "We will

1 continue to make transitional work available to you
2 in the laundry with a work schedule of," and then
3 it goes on. "All company policies continue to
4 apply to your continued employment."

5 And I am confident when I deposed Ms. Dusan
6 several years back, and I believe in the hearing as
7 well, she testified under oath she understood she
8 was expected to continue coming to work.

9 It's a massive record. I don't have it at
10 hand. But if you'd like us to follow up by
11 pointing that to you in the record, I would be
12 happy to.

13 CHAIR RAMOS: Translator?

14 THE INTERPRETER: I did not get what she said.

15 CHAIR RAMOS: You are translating from Counsel
16 Pettygrove.

17 THE INTERPRETER: Translate what?

18 MR. PETTYGROVE: There is testimony in the
19 record from Ms. Dusan, acknowledging she understood
20 she was supposed to continue coming to work.

21 CHAIR RAMOS: I'm not sure that answers your
22 question; so let's go into rebuttal, and we can
23 include any of those arguments that you want in
24 your rebuttal, please.

25 MR. HEALY: Thank you. First, I want to say

1 that the letter does not give a command
2 specifically to the complainant that she must
3 continue to work. In fact, Ms. Dusan did have to
4 go to the hospital during that time. Even if this
5 is taken to be an opportunity to make transitional
6 work available, it was not interpreted by us as
7 being an order to return to work.

8 An award of front pay is not speculative
9 simply because Yfen could not find a job. Let's
10 not forget that employers may not want to have a
11 Chinese National, speaking little English, or
12 having a serious disability.

13 There is another document attached to
14 Complainant's 22, which is the job of a teacher
15 assistant working 32 to 40 hours a week, which
16 Dusan applied for. This was June 15, 2016. It's
17 part of Complainant's 22.

18 Back to Respondent's 11. If it was so
19 important for Yfen to be working throughout the
20 time, and she didn't show up for work, they could
21 have terminated her before May 27, 2013. But they
22 did not.

23 Counsel brought up the issue of the barista
24 position. He mentioned language barrier and
25 lifting restrictions. The judge wrote that any

1 first-time barista would need to learn the
2 vocabulary through on-the-job training. Translate.

3 THE INTERPRETER: I'm doing that now.

4 MR. HEALY: Sorry. I don't mean to be rude.

5 THE INTERPRETER: Okay. Gosh. What was it?
6 Repeat that, please.

7 MR. HEALY: The judge wrote any first-time
8 barista would need to learn the vocabulary through
9 on-the-job training. Requiring her to already know
10 the vocabulary imposes an unfair set of criteria by
11 virtue of her having a disability, which would
12 violate the Indiana Civil Rights Law.

13 With regard to the lifting, in the barista
14 position such lifting or carrying was substantially
15 less than that for either the guestroom attendant
16 or for the laundry room attendant, Complainant's
17 Exhibit 22. And that's where the term, reasonable
18 accommodation, comes in.

19 I'm sorry. You lifted up your hand. What
20 does that mean, sir?

21 CHAIR RAMOS: You have five minutes.

22 MR. HEALY: That means it can include, for
23 example, some assistance with lifting. But, again,
24 the respondent did not offer any kind of reasonable
25 accommodation other than to hand her a two-page

1 document that doesn't list any functions or
2 requirements of the job, and they told her call us
3 back with one of these requests.

4 That was the extent of the assistance that
5 Belterra gave to Yfen.

6 Thank you.

7 CHAIR RAMOS: You have ten minutes.

8 MR. PETTYGROVE: Thank you. A front pay award
9 requires the claimant to put on evidence of how
10 long she would have continued working.

11 Some of the factors that should be addressed,
12 according to the Indiana Supreme Court, include the
13 claimant's medical condition and worklife
14 expectancy. There's no evidence in this record
15 tied to those factors. And simply saying that she
16 would have continued to look for work and wanted to
17 continue working does not meet the burden.

18 THE INTERPRETER: Repeat that, please.

19 MR. PETTYGROVE: The evidence must address the
20 appropriate factors. And simply saying that
21 Ms. Dusan would have continued trying to find a job
22 does not do that.

23 Regarding barista vocabulary, that is an
24 unfortunate red herring. The job description
25 doesn't impose any vocabulary requirements, and

1 nobody from Belterra ever said that vocabulary or
2 memorizing words was an issue.

3 Excuse me, counsel?

4 MR. HEALY: Nothing.

5 MR. PETTYGROVE: Did that complete the
6 translation?

7 THE INTERPRETER: No, because I forgot what
8 you said now. Can you repeat, please.

9 MR. PETTYGROVE: Neither the job description
10 nor Belterra's statements spoke about vocabulary,
11 which is remembering certain words. The issue has
12 always been stated in terms of communication skills
13 broadly.

14 Belterra's conclusion that Ms. Dusan cannot
15 communicate effectively with its customers is based
16 on working with her for a year during her injured
17 period and bringing in translators for
18 conversations.

19 It's based on extended and repeated
20 interactions with her where there were
21 miscommunications. It's based on the fact that
22 Belterra is in the hospitality industry, and we're
23 talking about a frontline customer service
24 position.

25 There is simply no evidence that Belterra

1 applied a different communication skill standard to
2 Ms. Dusan compared to anybody else. The job
3 description speaks to the need to communicate with
4 all types of customers, including difficult
5 customers. It speaks of the need to move quickly
6 and keep orders going out.

7 There's nothing discriminatory or irrational
8 in a company determining that an individual with
9 Ms. Dusan's communication abilities could not keep
10 its customers happy.

11 Now, Commission counsel mentioned that the
12 lifting needs in the barista position take up less
13 time. The same Seventh Circuit opinion, referenced
14 earlier by both parties, makes clear that doesn't
15 determine whether a function is essential.

16 The facts of that case are remarkably similar
17 to this. They involve a failure-to-accommodate
18 claim centered on lifting restrictions.

19 Translator, are you waiting on me?

20 THE INTERPRETER: Yes. I thought you need to
21 continue.

22 MR. PETTYGROVE: Okay. The Cook County case,
23 basically Cook County, pages 928 through 930,
24 contain clear and applicable guidance. An
25 essential function need not encompass the majority

1 of time or even a significant quantity of time to
2 be essential. The mere fact that others could do
3 the function does not show that the work is not
4 essential.

5 And I see I'm out of time, so I won't read the
6 last line. Thank you.

7 CHAIR RAMOS: Thank you. Thank you, counsel.

8 All right. Commissioners, we had a chance to
9 listen to the arguments of both the complainant and
10 respondent. Do you have any questions for either
11 parties?

12 So we have a few options that we can impose or
13 decide. One of them is we can uphold the ALJ's
14 decision of both the decision for award and the
15 award itself, or we can remand it back for further
16 investigation, or we can reverse the decision.
17 Those are our options.

18 We can look at it in two pieces. We can look
19 at it from the decision of do we feel that this
20 decision is correct as far as the position where
21 there was a disability involved, and in fact there
22 was discrimination. We can make that decision, and
23 then discuss the award, award possibilities.

24 Again, we can put it into two pieces. I want
25 to open that up for discussion for us. We don't

1 necessarily have to make a decision today. We can
2 contemplate that over the next 30 days and come
3 back. But at least I want to put all the options
4 on the table. Discussion.

5 COMMISSIONER SLASH: I would say the last
6 couple of oral arguments that we've heard, I would
7 like to take the 30 days to render a decision.

8 CHAIR RAMOS: Translator, so that I'm not sure
9 you heard everything, but we have the opportunity
10 from a Commission's standpoint to uphold, remand,
11 or reverse the decision of the ALJ.

12 THE INTERPRETER: I'm sorry. Did you say
13 reverse the decision of the ALJ?

14 CHAIR RAMOS: So the Commission has the
15 decision to make of whether we uphold the ALJ's
16 decision, remand back for further investigation, or
17 to reverse.

18 So the Commission is having a discussion.
19 Commissioner Slash has recommended that we take
20 additional 30 days to review.

21 Any other comments or thoughts on that?
22 Commissioner Harrington?

23 COMMISSIONER HARRINGTON: I just want to
24 review one thing. I want to make sure we
25 understand is the date, the actual termination date

1 relative to the April 26, 27, 28, 29, that time
2 period, what was the actual date of termination,
3 and how was that communicated?

4 CHAIR RAMOS: So the question that
5 Commissioner Harrington has is what was the actual
6 date of termination. So we ask Counsel Healy for
7 clarification.

8 MR. HEALY: Yes. Thank you.

9 Counsel Pettygrove has been kind enough to
10 hand me a document, which I believe is in the
11 record as an exhibit.

12 A letter was sent to Yfen on May 30, 2013 -- I
13 don't want to read the entire letter -- stating
14 that since we have had no contact from you in
15 regard to our previous meeting, and you have not
16 applied for any eligible position, we must
17 terminate your employment effective May 29, 2013.

18 CHAIR RAMOS: Does that answer your question?

19 COMMISSIONER HARRINGTON: Yes.

20 CHAIR RAMOS: Commissioner Jackson, any
21 questions?

22 COMMISSIONER JACKSON: No.

23 CHAIR RAMOS: Commissioner Blackburn?

24 COMMISSIONER BLACKBURN: No.

25 CHAIR RAMOS: So the discussion on the table

1 is to move this to an additional 30 days for
2 review.

3 COMMISSIONER JACKSON: So move.

4 COMMISSIONER BLACKBURN: Second.

5 CHAIR RAMOS: All those in favor, signify by
6 saying aye.

7 (Chorus of ayes.)

8 CHAIR RAMOS: Translator, so the Commission
9 has decided to move this an additional 30 days for
10 further review.

11 I don't know that we need to do anything more
12 specific because the judge is going to come in and
13 say what do you want to dive into; right? So we're
14 going to need to provide some question or guideline
15 around that for her.

16 Translator, discussing with the Commission
17 what are the ground rules for the continued
18 evaluation as our ALJ will be asking those
19 questions.

20 So one of the questions we have is a question
21 regarding front pay versus, no, front pay and back
22 pay for further understanding of her decision
23 mindset that was put together for that. Does that
24 make sense? Okay?

25 COMMISSIONER HARRINGTON: Yes.

1 CHAIR RAMOS: Okay. Another question? Any
2 other questions that we have?

3 COMMISSIONER HARRINGTON: Will all the
4 exhibits that they shared today, including I think
5 it was labeled R11, and they read off the
6 termination letter, those would be made available,
7 as well, for reference?

8 COMMISSIONER SLASH: Yes.

9 CHAIR RAMOS: The other question is to make
10 sure that all the Commissioners have the relevant
11 material that was provided today by the counsel.
12 It should be in the record, but we'll just make
13 double sure of that.

14 COMMISSIONER BLACKBURN: I do have a question
15 with regard to an integral issue not really
16 addressed today of effective communication as
17 essential to the job performance, and how that
18 weighed into the decision to terminate as opposed
19 to accommodate the complainant.

20 CHAIR RAMOS: This is a question for
21 clarification from counsel.

22 COMMISSIONER BLACKBURN: Somebody.

23 THE INTERPRETER: Do I need to interpret?

24 CHAIR RAMOS: Yes. Are there any other
25 questions? Okay.

1 So the conclusion on this is we will ask the
2 ALJ to return so that we can provide her the proper
3 guidance.

4 (A recess was taken.)

5 (Administrative Law Judge Ryker returned to
6 the hearing room.)

7 CHAIR RAMOS: We'll continue. Judge Ryker,
8 the Commission has decided to remand this case back
9 for further understanding, further clarification.
10 There are three key points.

11 The first point was the decision process that
12 you went through in determining the front pay and
13 the back pay and the specific rates of pay, since
14 that was addressed in our discussion.

15 The second point has to do with providing some
16 of the letters and evidence that was provided to
17 the Commissioners. Specifically, I think, R11 and
18 the termination letter.

19 And the last point had to do with
20 understanding the determination of the requirements
21 for communication as a barista.

22 Is that correct, Commissioner Blackburn?

23 COMMISSIONER BLACKBURN: Yes.

24 CHAIR RAMOS: So we would, at our next
25 Commissioner meeting, we would like to review those

1 comments, if you can review them or put them into
2 written form, I guess, so we understand.

3 Any other questions or comments for counsel or
4 Judge Ryker?

5 Do you have any questions, Judge?

6 JUDGE RYKER: Is it okay with the parties if I
7 ask a point of clarification?

8 MR. PETTYGROVE: Yes.

9 JUDGE RYKER: With respect to putting it into
10 an additional written form, are you asking for a
11 new order?

12 CHAIR RAMOS: We are trying to understand the
13 elements of the front pay and your process. You
14 provided a calculation sheet. We're just trying to
15 understand some of that basis, I guess.

16 COMMISSIONER SLASH: And the difference
17 between the two; so that if we want to write a new
18 order, we have a little bit more clarity.

19 JUDGE RYKER: Okay. Thank you.

20 CHAIR RAMOS: All right. Counsel?

21 MR. PETTYGROVE: Does the Commission want
22 counsel at the next meeting as part of the next
23 step?

24 CHAIR RAMOS: I don't believe we need you at
25 the next meeting.

1 MR. PETTYGROVE: Thank you.

2 JUDGE RYKER: And just as a point of
3 clarification, anything that I submit to the
4 Commission will be sent to counsel also.

5 MR. PETTYGROVE: Thank you.

6 CHAIR RAMOS: That was the last item we had on
7 the main agenda. Back to the agenda, we have some
8 dates that come up for our next events.

9 Translator, thank you for your assistance. We
10 appreciate that.

11 THE INTERPRETER: Okay. You are more than
12 welcome. Thank you. Have a good one. Goodbye.

13 CHAIR RAMOS: We have dates coming up:
14 October 18, November 15, and December 20. Any
15 conflicts with your schedules, Commissioners?

16 Okay. Any announcements to be made?

17 I think Commissioner Blackburn was honored
18 with the Governor's award for the Sagamore. What's
19 the official title?

20 COMMISSIONER BLACKBURN: Sagamore of the
21 Wabash.

22 CHAIR RAMOS: Sagamore of the Wabash, which is
23 a great honor for anyone to receive that. So
24 congratulations to you, Commissioner Blackburn.
25 That's fantastic.

1 COMMISSIONER BLACKBURN: My thanks to the
2 Governor. Thank you.

3 CHAIR RAMOS: Are there any public comments?

4 COMMISSIONER JACKSON: Folks in the back, I
5 think.

6 MS. DEVELAN BLAND: I never came to this
7 before, and I would like to mention about my case.

8 CHAIR RAMOS: Can you please come up front and
9 identify your name.

10 Yes, counsel, you may both be excused.

11 So this is recorded, so that you know. Please
12 identify your name and particular case that you are
13 affiliated with.

14 MS. DEVELAN BLAND: OrthoIndy.

15 CHAIR RAMOS: OrthoIndy.

16 MS. DEVELAN BLAND: My name is Develan Bland.

17 CHAIR RAMOS: Develan Bland.

18 MS. DEVELAN BLAND: Yes, sir.

19 CHAIR RAMOS: How do you spell the last name?

20 MS. DEVELAN BLAND: B-L-A-N-D. I'm number
21 two.

22 CHAIR RAMOS: On our list for Commissioners?

23 MS. DEVELAN BLAND: Yes.

24 CHAIR RAMOS: All right. Develan Bland versus
25 OrthoIndy Urgent Care. Commissioner Slash was

1 assigned that. Go ahead.

2 MS. DEVELAN BLAND: I think it was January. I
3 was in an accident May 3, and I had, I didn't know
4 of -- my doctor sent me to OrthoIndy. And I
5 called, and they told me as long as I get there
6 before eight. But we didn't go that day. We went
7 the next day.

8 So when I got there, we got there before
9 eight. So the lady named Gwen was sitting at the
10 desk, and she asked me my information, and I gave
11 it to her.

12 And another lady butted in. Her name was
13 Angie. And she was very abusive. She talked to me
14 real bad. There's a camera that was looking at us.
15 You can just review that camera. And she talks to
16 the, the security guard is sitting there. And
17 what's her name, Vanessa, the lady that took our
18 information? Gwen, then the security guard, and
19 then Angie.

20 And so Angie storms to the back and goes back
21 and gets somebody from the back. And I said what's
22 she going back there for? And so she, Gwen, said
23 she was going back to get somebody. And I said
24 okay.

25 And so when the doctor came out, his name was

1 Heath -- Jelen. And so the man, so when she went
2 to the back, she stayed back there a good 30 or 40
3 minutes, just enough to talk about what happened in
4 the front.

5 But, see, I'm talking to the lady that took my
6 information, you understand. So this lady butts
7 in. And so the doctor comes in. The man and that
8 woman come in the front, and then the woman, he
9 just automatically said we ain't going to see you.
10 He said you might as well go somewhere else because
11 we ain't going to see you.

12 I said why. He said we just ain't going to
13 see you. I mean what. My doctor sent me. Plus I
14 called before coming. I'm in, if you listen to the
15 answering service, it says fractures, bones and
16 sprains. okay. But I put down fracture because I
17 didn't know fracture was a broken bone because I
18 was in a car accident, and I hurt my hand. And
19 I've got proof to show that I hurt my arm, and I'm
20 still going through trouble with my arm. And they
21 found out I've got (inaudible) in my arm.

22 So they said -- we got there, they was almost
23 getting ready to close. And so here comes a
24 Caucasian couple coming in, a lady pushing her
25 husband or vice versa, and it was almost time for

1 them to close, and they saw them. But they turned
2 us away.

3 And that's wrong, you know, especially my
4 doctor sent me. Plus I got there before time. The
5 lady talks to me very abusive. Then she runs in
6 the back. She goes and tells this doctor who's
7 supposed to see us, the man who is supposed to see
8 us in the back, and he just comes straight on out
9 and says I'm not going to see you. I'm not going
10 to serve you.

11 CHAIR RAMOS: Thank you.

12 The way the process works, you have an
13 opportunity to present your case to our
14 Commissioners in front here as far as the public is
15 concerned. But we are each assigned a case.
16 Investigators have gone through that process, and
17 then the Commissioner will review the case. And
18 then if there are questions in that that are
19 outside of that, then we will work with the
20 investigators on that.

21 MS. DEVELAN BLAND: Well, I gave you -- I'm
22 sorry.

23 CHAIR RAMOS: So let me finish. So she has 30
24 days to look at that information. If there are any
25 questions at all, then she has the opportunity to

1 again work with the investigators on that.

2 MS. DEVELAN BLAND: Well, who is mine?

3 CHAIR RAMOS: Commissioner Slash has been
4 assigned the case.

5 MS. DEVELAN BLAND: Okay.

6 CHAIR RAMOS: Her role is not to investigate.
7 Her role is to review the facts that have been
8 presented from the staff, and then make a
9 recommendation to either uphold whatever the
10 decision is from the executive director, to remand
11 it back for further investigation, and you saw some
12 of that here today, or to reverse. So that's the
13 process that will happen over the next 30 days with
14 Commissioner Slash.

15 MS. DEVELAN BLAND: Okay. I just want you to
16 know I sent you my, I recorded me and Ms. Smith's,
17 I recorded me and Ms. Smith, and I recorded the
18 other lady that I talked to, and the recording of
19 when you call, and they tell you what they
20 specialize in. Plus the camera is sitting dead
21 upon us. All you've got to do is look at that
22 camera, and you will see I'm telling the truth.

23 I had no reason to go off or anything. You
24 know, I'm coming there for help.

25 Plus they had in my document, it said I got

1 shot or a shot. You know, I said I hurt my arm.
2 You understand. So you ought to know if I said
3 shot or -- and, plus, my doctor sent me, plus I
4 called. And you just can't come out of the back
5 and tell me I'm not going to see you. For what?
6 What's the reason why? That's wrong.

7 CHAIR RAMOS: Thank you, and Commissioner
8 Slash will get that. Do you have any comments or
9 questions?

10 COMMISSIONER SLASH: No. I just thank you for
11 coming in an putting a face with a name.

12 MS. DEVELAN BLAND: Well, I just wanted, I
13 just don't, you all sent me a letter, and I just
14 wanted to let you know all you got to do is look at
15 that camera because I'm telling the truth. That's
16 wrong for them to send me way, and it's out of my
17 way, wasting my gas, my time, to get turned away,
18 plus my doctor sent me, and plus I'll line up with
19 the answering service.

20 You still should have saw me, you understand.
21 You had no right to turn me away. And then the
22 other people get there a little bit before, and
23 then you still see them. You said get there
24 before. Why did you see them then? You know,
25 that's wrong.

1 CHAIR RAMOS: Did you request the camera
2 footage?

3 MS. DEVELAN BLAND: Yes, I did. And you can
4 hear it on the recorder. Just listen to my
5 recorder. She's got everything. Just listen to
6 it. I'm telling the truth.

7 And I kept telling her, and she said, we're
8 going to pull the footage. I said do that because
9 that footage is going to tell.

10 I don't know if you can hear us talking, but
11 you can see the interaction. You know, it upset
12 me. You know, it made me cry. Why you have me
13 come way over here? You ain't got no explanation
14 why you turned me away. You can't do that.

15 But they did, so that's why I came. That's
16 wrong. That's wrong. And to turn me and my
17 daughter away, and you're going to take -- I'm not
18 prejudiced. I don't believe in that stuff. We all
19 got the same blood. We're going to, you know,
20 bleed the same. I don't believe in that prejudice
21 stuff.

22 And I just don't feel that that was right the
23 way they treated me and my daughter after I done
24 come all that far and all the pain I'm in. And now
25 I've got tendonitis in this arm and thrombosis. So

1 they should have saw me.

2 CHAIR RAMOS: Thank you. Any other questions
3 or comments?

4 COMMISSIONER SLASH: No.

5 CHAIR RAMOS: Any other items for discussion?
6 Hearing none, the hearing is adjourned.

7 MS. DEVELAN BLAND: I thank you.

8 CHAIR RAMOS: You're welcome.

9 COMMISSIONER SLASH: Thank you.

10 (Hearing adjourned at 3:40 p.m.)

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STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

I, Kathleen Andrews, Notary Public in and for the County of Hamilton and State of Indiana, do hereby certify that the foregoing transcript is a true, full, and complete transcript of the proceedings had.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official notarial seal on this _____ day of _____, 2019.

Kathleen Andrews, RPR, Notary Public

County of residence: Hamilton County
My commission expires: March 22, 2023