

1 STATE OF TENNESSEE
 DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
 2
 EMPLOYEE MISCLASSIFICATION ADVISORY TASK FORCE
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8 TASK FORCE MEETING
 January 26, 2012
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10 This meeting of the Employee
 11 Misclassification Advisory Task Force was conducted in
 12 the Tennessee Room at 220 French Landing Drive,
 13 Nashville, Tennessee, on Thursday, January 26, 2012,
 14 beginning at 1:00 p.m., and the following is a
 15 transcript of the proceedings that were had, to wit:
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 19
 20

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1 APPEARANCES:

2 Members:

Kim Jefferson on behalf of Commissioner

3 Karla Davis

4 Carolyn Lazenby on behalf of the Board for
Licensing Contractors

5

Mike Shinnick on behalf of Commissioner

6 Julie McPeak

7 Ex Officio Members:

Dan Bailey on behalf of the Labor & Workforce
Development

8

9 Nathan Burton on behalf of Secretary of State
Tre Hargett

10

Martha Campbell on behalf of the Attorney General
and Reporter Robert Cooper, Jr.

11

12 Charles Herrell on behalf of the Administrator of
the Workers' Compensation Division Abbie
Hudgens

13

14 Lynn Ivanick on behalf of Tennessee State
Treasurer David Lilliard

15

Jason Locke on behalf of the TBI

16

17 James Milam on behalf of the District Attorneys
General Conference

18

19

20 Randy Thomas on behalf of The Travelers Companies,
21 Inc.

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1 CALL TO ORDER

2 MS. JEFFERSON: Good afternoon. My name is
3 Kim Jefferson. I'm Chair Designee for Karla Davis,
4 the Commissioner for the Tennessee Department of Labor
5 and Workforce Development. On behalf of Commissioner
6 Davis and the Employee Misclassification Advisory Task
7 Force, welcome to the January 26, 2012 Task Force
8 meeting.

9 Before we get started, we have some
10 preliminary matters. We'd just like to welcome two
11 persons to the Task Force. The first person I'd like
12 to welcome is Special Agent Jason Locke. Mr. Locke is
13 newly appointed. He's the newly appointed Designee
14 for the Tennessee Bureau of Investigation or TBI.
15 He's not entirely new to the Task Force because he
16 helped us to edit the final draft. And Mr. Locke
17 assisted the Review Committee with editing the final
18 report. So I'd just like to welcome you to the Task
19 Force today.

20 In addition, we're joined by Charles Herrell.
21 Mr. Herrell has joined the Task Force as Designee for
22 Abbie Hudgens who is the Administrator for the
23 Workers' Compensation Division. Mr. Herrell has
24 worked with the Department since February 2005. And
25 he works specifically for the Workers' Compensation

1 Division, the Uninsured Employers Fund and the
2 Employee Misclassification Education and Enforcement.
3 Thank you for joining us.

4 MR. HERRELL: Thank you.

5 ROLL CALL OF MEMBERS

6 MS. JEFFERSON: Now we'll have roll call by
7 Lynn Ivanick. Ms. Ivanick, you have the floor.

8 MS. IVANICK: For a meeting of the Employee
9 Misclassification Advisory Task Force of 1-26-12,
10 Chairman Kim Jefferson?

11 MADAM CHAIR: Here.

12 MS. IVANICK: Carolyn Lazenby?

13 MS. LAZENBY: Here.

14 MS. IVANICK: Mike Shinnick?

15 MR. SHINNICK: Here.

16 MS. IVANICK: Daniel Bailey?

17 MR. BAILEY: Present.

18 MS. IVANICK: Nathan Burton?

19 MR. BURTON: Here.

20 MS. IVANICK: Martha Campbell?

21 MS. CAMPBELL: Here.

22 MS. IVANICK: Jason Locke?

23 MR. LOCKE: Here.

24 MS. IVANICK: Charles Herrell.

25 MR. HERRELL: Here.

1 MS. IVANICK: Myself. Present. James Milam?

2 (No response.)

3 MS. IVANICK: Randy Thomas?

4 MR. THOMAS: Here.

5 MS. IVANICK: Madam Chairman, you have a
6 quorum. You have three of three voting members, seven
7 of eight nonvoting, for a total of 10 of 11 total
8 members.

9 MADAM CHAIR: Thank you, Ms. Ivanick.

10 And pursuant To the Tennessee Code
11 Annotated, Section 50-6-919, subsections (d) and (e),
12 there are three voting members. The remaining members
13 are ex officio members or nonvoting members.

14 ADOPTION OF DECEMBER 1, 2011 MEETING MINUTES

15 MADAM CHAIR: The next item on the agenda is
16 the adoption of the December 1st, 2011 meeting
17 minutes.

18 MS. LAZENBY: Make a motion to adopt.

19 MR. SHINNICK: I second.

20 MS. IVANICK: It has been properly moved and
21 seconded. Is there any discussion? All those in
22 favor?

23 ALL: Aye.

24 MS. IVANICK: All opposed?

25 (None were opposed).

1 MS. IVANICK: Motion carries.

2 MADAM CHAIR: Thank you.

3 ADOPTION OF THE JANUARY 26, 2012 AGENDA

4 MADAM CHAIR: Next on the agenda is the
5 adoption of the January 26, 2012 agenda. I move for
6 the adoption of the January 26, 2012 agenda.

7 MR. SHINNICK: I second.

8 MS. IVANICK: Any discussion? It's properly
9 moved and seconded. All those in favor?

10 ALL: Aye.

11 MS. IVANICK: All opposed?

12 (None were opposed.)

13 MS. IVANICK: And the motion carries.

14 MADAM CHAIR: Thank you, Ms. Ivanick.

15 PUBLIC COMMENTS

16 MADAM CHAIR: The next item on the agenda is
17 the public comment segment. Are there any comments at
18 this time? If so, please take the podium. Would
19 anyone like to make comments at this time?

20 (No response.)

21 MADAM CHAIR: If not, we have another public
22 comment segment, and we can just hold the comments
23 until then.

24 EMATF 2012 ANNUAL REPORT

25 MADAM CHAIR: The next item on the agenda is

1 the 2012 Annual Report. And if you don't have a copy
2 of the Report, Sue Gordon and Jeanie Talton -- if
3 you'll raise your hands so we can see who you are --
4 if you don't have a copy, they can provide you with
5 one. Does everyone have a copy? Okay, great.

6 And just so that you'll know, additional
7 copies can be found on the table near the door.

8 At this time, I'd just like to thank everyone
9 for contributing to the Task Force efforts. Special
10 thanks to all the committees that were formed, the
11 Uninsured Employers Fund employees, the Employee
12 Misclassification Education and Enforcement Fund
13 employees, the insurance industry, various employer/
14 employee groups, business associations, and the
15 general public.

16 The Task Force studied Tennessee Code
17 Annotated, Section 50-6-919, subsection (b), items 1
18 through 6. And we considered issues associated with
19 those items, and we made recommendations accordingly.
20 The recommendations are listed in the Executive
21 Summary and in Section 9 of the Report.

22 And at this time, I'd just like to direct
23 your attention to the Table of Contents. As you can
24 see, the Executive Summary is listed in Section 1;
25 Legislative History, Section 2; Section 3: Efforts and

1 Progress; Section 4: Administrative and Legal
2 Impediments; Section 5: Reducing Employee
3 Misclassification; Section 6: Exposing Underground
4 Economy; Section 7: Impact on the Insurance Industry;
5 Section 8: Impact on State and Local Governments;
6 Section 9: Proposed Legislative Initiatives and
7 Recommendations; Section 10: Revenue and Expenditures;
8 Section 11: Task Force Committees. And we have
9 Appendix A, which includes Tennessee Code Annotated
10 50-6-913 and Appendix B, Tennessee Code Annotated,
11 Section 50-6-919.

12 And as you can see, the committee reports and
13 supplemental reports can be found on the website.
14 There has been a website established for the Employee
15 Misclassification Advisory Task Force. And I'll speak
16 to that a little later.

17 Does anyone have any questions about any of
18 those topics, any of the sections?

19 (No response.)

20 MADAM CHAIR: Okay. If you don't have any
21 questions, then I would direct your attention to the
22 Executive Summary, the next page. And I just want to
23 give you an overview of the Executive Summary.

24 It includes brief legislative history. It
25 identifies problems in Tennessee, the financial

1 impact. It provides initial recommendations. And it
2 also provides future action items.

3 All of our Task Force members should have had
4 an opportunity to speak with their officials by now.
5 Has everyone spoken with their agency officials about
6 the Report? Okay.

7 Has anyone not spoken with the officials? If
8 so, we just need to make sure that we speak with the
9 agency officials before Monday because on Monday we
10 plan to e-mail the Report to the committee chairs
11 along with the committee members. And we also plan to
12 hand deliver the Report to the committee chairs.

13 At this time, I'd just like to give the Task
14 Force members an opportunity -- the chairs -- an
15 opportunity to provide brief comments if they'd like
16 to about the sections in the Report which they chaired
17 and they actually provided as summaries.

18 And the first person I have is Research and
19 Resource, Carolyn Lazenby. Is there anything that you
20 want to say to the group? Were there any -- I guess
21 we can just do this. Were there any clerical errors
22 or grammatical errors after you read the information?

23 MS. LAZENBY: No. It was okay as read.

24 MADAM CHAIR: Okay. Insurance Committee?

25 MR. SHINNICK: Nothing.

1 MADAM CHAIR: And Mike Shinnick, just for the
2 record.

3 THE REPORTER: Thank you.

4 MADAM CHAIR: Okay. And Legal Committee, Dan
5 Bailey?

6 MR. BAILEY: I have nothing to add.

7 MADAM CHAIR: Enforcement Committee, Martha
8 Campbell?

9 MS. CAMPBELL: I have nothing to add.

10 MADAM CHAIR: Education Committee, Lynn
11 Ivanick?

12 MS. IVANICK: It's fine.

13 MADAM CHAIR: So for all intents and
14 purposes, the Report is near completion. In the event
15 that concerns were not addressed in this report, in
16 the 2012 Annual Report, no worries. Please know that
17 we will be studying more issues and more topics in the
18 future. We will add those topics to the next report.

19 The Task Force did not want to overburden the
20 legislative committees with a voluminous report and
21 materials. We just wanted to provide the most concise
22 and detailed information that we could. We also
23 wanted to make it reader friendly, and that was our
24 goal.

25 So if you have additional topics that you

1 would like for us to include the next time in the 2013
2 Annual Report, please let me know, and I'll forward
3 all of your comments on to the appropriate committee
4 chairs.

5 If there are serious concerns about the
6 Report as written, or if the direction of the Task
7 Force -- if the direction that we've taken is somehow
8 different than what you expected, you'll be able to
9 voice your concerns during the next public comment
10 segment.

11 FUTURE COMMITTEE MEETINGS

12 MADAM CHAIR: The next item on the agenda are
13 future committee meetings. And the Task Force
14 recognizes that our work is not done. After
15 recommendations from legislative initiatives,
16 additional findings that lead to solutions. In the
17 next report, I'm sure that everyone will be concerned
18 about the solutions and what we've been able to
19 accomplish.

20 Future subcommittee meetings will address
21 Tennessee Code Annotated Section 50-6-919, subsection
22 7 through 13. And for Task Force members, if you can
23 take a look at the issues for consideration. I've
24 included the same issues for consideration that we've
25 been using since we started reviewing and studying.

1 If you'll take a look at that information. It's
2 included in your packet.

3 The Research and Resource Committee, chaired
4 by Carolyn Lazenby, will study Items 7, 8, 10, 11, 12,
5 and 13 going forward.

6 The Insurance Committee, chaired by Mike
7 Shinnick, will study Items 10, 13 and also study items
8 that were tabled from the 2012 Report.

9 And James Milam has just joined us. Good to
10 have you, James. James, if you would, just state your
11 name and your --

12 MR. MILAM: Yes. I'm James Milam of the
13 Davidson County District Attorney's office, Designee
14 of the Tennessee District Attorneys Conference.

15 MADAM CHAIR: Thank you.

16 And we're looking in the package that you
17 have there, James. Included in the package are issues
18 for consideration. These are the same issues that we
19 were working on. And we're on the Legal Committee,
20 which is the third page.

21 The Legal Committee is chaired by Dan Bailey.
22 And Dan and the Legal Committee will study and review
23 issues 9, 10, and 13.

24 The Enforcement Committee chaired by Martha
25 Campbell will study Items 7, 10, and 13.

1 Finally, the Education Committee chaired by
2 Lynn Ivanick will study 10, 11, 12, and 13.

3 The committee chairs will continue to hold
4 meetings to continue to study issues and engage
5 committee members in discussions and also involve the
6 general public during all these discussions.
7 Committee reports will be made at each meeting as we
8 go forward.

9 And other suggested issues that I received
10 from the public -- there were other issues they wanted
11 us to think about studying in the next report. They
12 include large commercial companies, large or
13 noncommercial projects, residential projects, creative
14 maneuvering, leakage and loopholes as it relates to
15 the exemption registry. And I was also asked to
16 forward the message to take a look at criminal
17 statutes to see if they are adequate.

18 We'll continue to look at collaborative
19 efforts. And I'd just like to say, the Tennessee
20 Department of Labor's investigators have established a
21 round table. And this round table consists mainly of
22 investigators and auditors from within the Department.
23 Each one of the divisions has a representative or two
24 to represent them.

25 And what this round table is doing is

1 communicating amongst each other. And they're opening
2 the lines of communications so that the Workers'
3 Compensation Division will understand what happens
4 with labor standards. Everybody will understand what
5 happens with TOSHA and all the other agencies within
6 our department or divisions within our department.

7 And this will allow the investigators to
8 exchange ideas. It will allow them to exchange
9 strategies, investigation strategies. It will also
10 help us to reduce duplicative efforts.

11 In the past, we had all these different
12 divisions requesting the same information from
13 employers. What we want to do is work towards having
14 them to work together and find out what all the other
15 agencies are collecting so that that information
16 doesn't have to be collected over and over again.

17 And what we plan to do, the round table will
18 discuss cases, provide the Task Force with information
19 that could be used in the next Annual Report. And
20 that would show our progress, will show some
21 solutions. So we're really excited about that.

22 Okay. And the first official round table
23 discussion was this morning, and John Basford and Norm
24 Auffhammer -- if you all are here, would you please
25 stand? Anyone else associated with that effort please

1 stand. Thank you.

2 And I would encourage all the member agencies
3 to establish this type of forum for their
4 investigators or at least send a representative to the
5 Department, provide us with a representative so that
6 we can get them involved. For instance, if there's
7 someone with the Board of Licensing Contractors or
8 someone with TBI or someone in the DA's office, they
9 could possibly work with our investigators.

10 And another issue that was suggested was
11 necessary follow-up after audits are performed. It's
12 very important that we follow up, especially with the
13 employee misclassification work because we're finding
14 that if we're to wait until after the audit of some of
15 the cases, then we have to make sure that we follow up
16 and put a proper mechanism in place so we can do that.

17 Also another issue is notify insurance
18 companies and the Department of Commerce and
19 Insurance. That's pretty much the last resort. If
20 we're not able to obtain satisfaction any other way,
21 we should at least put them on notice. Now, the
22 Department already notifies insurance companies. We
23 do that in most of our cases anyway.

24 However, we're going to take a more proactive
25 step and refer more cases to the Department of

1 Commerce and Insurance.

2 Did you all have anything to add to those
3 issues?

4 (No response.)

5 MADAM CHAIR: If you don't, we're on Item 8.

6 MR. PITTS: Madam Chair?

7 MADAM CHAIR: Yes.

8 MR. PITTS: Could I ask you a couple of
9 questions about what you just spoke to?

10 THE REPORTER: Sir, what is your name,
11 please?

12 MR. PITTS: My name is Bob Pitts.

13 THE REPORTER: Thank you.

14 MR. PITTS: Associated Builders and
15 Contractors.

16 THE REPORTER: Thank you.

17 MR. PITTS: I'd like to hear a little bit
18 more about how you intend to go forward with the
19 studying of the rest of these issues. Some of us in
20 the outside industry would like to go to as many of
21 those meetings as we could. So it's fairly important,
22 if it can be done, that those of us who have been
23 coming get notified when all these subcommittees are
24 meeting. And to the extent possible, that they not be
25 on top of each other because you can only go to one

1 meeting at a time.

2 And I'm sort of curious as to how quickly
3 you're going to gear the year back up. Some of us are
4 involved with the legislative session. It's probably
5 going to be over by the end of April. And I don't
6 know if you all are going to start the full board next
7 week or take a six-month sabbatical and start again,
8 or what's the game plan.

9 And then, finally -- well, two more. These
10 items that you mentioned that folks had asked you to
11 add to the list of things you're already looking at --
12 I think we'd all like to know what subcommittees are
13 going to get those functions.

14 And then, finally, is the enforcement round
15 table an in-house operation, or is it subject to
16 attendance by outsiders?

17 Those are my questions.

18 MADAM CHAIR: Okay. Let's try to get to the
19 first issue. Okay, the first issue is when do we plan
20 to gear up. That was one of the issues. When do we
21 plan to have the next -- hold the next Task Force
22 meeting. We haven't talked about that yet.

23 What we've been talking about is just trying
24 to get the Report done. Next week we -- we're not
25 done yet. Even after the meeting today, we have to

1 make sure that everything is properly edited. We have
2 to make sure that all of the signatures -- the
3 Commissioner's signature is obtained. And that we
4 submit the information on or before February the 1st.
5 So right now, that's the primary goal is to actually
6 complete the Report because we're not there. Although
7 we're really close, we're not there yet.

8 As far as the next meeting, I will be
9 contacting the Task Force members like I normally do
10 after this meeting, and we will decide when we would
11 meet.

12 MR. PITTS: More specifically, I was
13 interested when the subcommittees are going to start
14 meeting again.

15 MADAM CHAIR: Okay. The subcommittees --
16 I've just given them instructions to proceed. They
17 will be contacting the members like they normally do
18 to let them know -- all the members of the
19 committee -- to let them know when the meetings will
20 be. I assume they will talk with the committee
21 members and ask them what dates are available, are
22 good for them, and then just go from there. Is there
23 anything the committee chairs would like to add?

24 MS. IVANICK: If I could add, personally,
25 like Bob, I'm involved with the legislative session.

1 Probably won't start up another Educational Committee
2 until that's over. But I would love the input of
3 anyone sitting here or anyone who is interested at the
4 Educational Committee. So is there a way we could put
5 it on the website?

6 MADAM CHAIR: Well, we have a website now.
7 We can post the actual date. But what I would suggest
8 is that members talk with committee members first to
9 see what's available, and then we can post it on the
10 website.

11 MS. IVANICK: I would like to do that.

12 MADAM CHAIR: Okay. We can do that. So once
13 you know your dates -- in the past the committee
14 chairs sent me an e-mail letting me know when they
15 plan to have their meetings. Send me that
16 information, and we can just provide that to our
17 communications office.

18 MS. IVANICK: Would that be good for you?

19 MR. PITTS: I'm just sort of interested if we
20 were going to get right back in it the second week of
21 February, or if we're going to take a short break
22 before the subcommittees were back in it.

23 MADAM CHAIR: We haven't talked about that
24 yet.

25 MR. BAILEY: I guess what I was going to say,

1 maybe we should talk about it because there are
2 several people in this room that are going to be busy
3 until the legislature ends. And if there isn't really
4 a need for us to gear back up, I mean --

5 MADAM CHAIR: Is that what you all prefer?

6 MR. BAILEY: Maybe we should, as a Task
7 Force --

8 MR. PITTS: It would be nice.

9 MR. BAILEY: -- we'll start meeting again
10 in -- I don't know -- June, and that way it gives the
11 subcommittees a chance to -- once the legislature
12 ends -- to maybe get a meeting in before that June
13 meeting so we would have some kind of report to report
14 to. So would that be better for everybody?

15 MR. HERRELL: Is it foreseeable that there
16 could be action taken by the legislature that would be
17 in the business of this committee? And if so, would
18 it not be important for us to have the option to meet
19 in order to provide guidance or answer questions that
20 the General Assembly may have?

21 MADAM CHAIR: That is a possibility, but we
22 don't know that today. Today I'm not --

23 MR. HERRELL: Should we not keep that option
24 open?

25 MADAM CHAIR: We can keep that option open.

1 As far as setting a date, I wouldn't suggest that we
2 set a date, Dan.

3 MR. BAILEY: No. Well, I'm not saying the
4 exact date, but like -- yeah, that we won't meet
5 before June or something like that as a Task Force.

6 MADAM CHAIR: Well, if legislation -- when
7 does legislation end? The last day --

8 MS. IVANICK: One was yesterday and one is
9 the first.

10 MR. PITTS: The Senate is today.

11 MS. IVANICK: The Senate is today; the House
12 is the first of February.

13 MR. PITTS: If we don't get it in the Senate
14 today, though, there won't be any need to worry about
15 the House.

16 MADAM CHAIR: So based on that, there's
17 really no need for us to --

18 MR. BURTON: I don't know that I would agree
19 that there's not. I think you have -- and I would
20 like to confer with what Charlie said. I think
21 there's some items that we put forth to them as
22 recommendations. One of the things, once the Report
23 is filed, you may want to ask the chairs of those
24 committees is do they plan on asking us to come over
25 and talk about what's in the Report. My guess is the

1 answer will be yes. And as soon as they notify you,
2 then I think we have to notify other folks that are
3 interested so that they could show up as well would be
4 appropriate.

5 We do have some recommendations in the Report
6 that have a fiscal impact. And if the legislature
7 decides to take it up, we're going to need to make
8 sure we are following that to make sure it gets
9 included in the amendment to the appropriations bill.

10 I think one of the other things I recall is
11 whenever they get the appropriations bill, you want to
12 try to be included on that whenever they start to talk
13 about it.

14 I think the other thing that I thought I had
15 heard at one point in a meeting, as you had said,
16 there had been some requests made to the Commissioner
17 for potential expenditures from the Fund. I mean, she
18 has the authority to do that. We need to make sure
19 that those expenditures are included in the
20 appropriations bill as well. So I think there's going
21 to be a need for us to meet. I know we can't set the
22 date today, but I do think we need to leave the option
23 open.

24 The other thing, I think it is a good idea to
25 post whenever those meetings are. But if you could

1 also send out some type of e-mail to those parties
2 that are interested so they don't have to go and look
3 at the website every day, when they get that e-mail
4 they understand -- even if the e-mail just said, we
5 have updated meeting dates. Please go look at the
6 website. They can do so.

7 MADAM CHAIR: Okay. That's a good idea.

8 MR. BURTON: I think it's important. I think
9 you've got a lot of interested people that have been
10 valuable to the process, and to continue to keep them
11 involved in the process is very important.

12 MR. PITTS: Let me make clear. I wasn't
13 trying to shut down the work of this body. All I was
14 raising was the question on the subcommittee work as
15 to when you were going to gear up to do items 7
16 through 13.

17 MR. BURTON: And I would also agree that
18 waiting until after session to start on those items
19 would be best because there are several folks who have
20 made comments that they are involved in the
21 legislative process. And trying to do that while the
22 legislature is still here might be a bit much.

23 MADAM CHAIR: And I think that's where the
24 committee chairs can use their discretion. And
25 everyone will be provided notice.

1 MR. BAILEY: So just for clarification, if we
2 do meet again while the legislature is going on, there
3 will be no committee reports.

4 MADAM CHAIR: Well, the committee reports
5 would only come when we have an actual Task Force
6 meeting.

7 MR. BAILEY: Well, I know. But following
8 what Nathan is saying, there could be a reason for the
9 Task Force to reconvene. And I totally agree with
10 that, but --

11 MADAM CHAIR: If there was a meeting, we'd
12 call a special meeting based on one of the issues at
13 interest.

14 MR. BAILEY: Right. But the committees
15 wouldn't be prepared to report.

16 MADAM CHAIR: No, no. The only time that a
17 committee would be expected to report is if it's
18 directly affected.

19 Mr. Pitts, I know you had some more
20 questions. I'm not sure if I got all of them. Did
21 you get all of your answers?

22 MR. PITTS: I think I did except I don't --
23 I'm not sure you ever responded to whether the
24 enforcement round table was an in-house operation --

25 MADAM CHAIR: Oh, okay.

1 MR. PITTS: -- or whether it was --

2 MADAM CHAIR: Actually, it's in-house.

3 MR. PITTS: Okay. That's fine.

4 MADAM CHAIR: It's in-house.

5 MR. PITTS: Just wanted to know.

6 And the other is, at such time as you assign
7 these other items to subcommittees, it'd be nice if
8 you would e-mail out --

9 MADAM CHAIR: I will.

10 MR. PITTS: -- who's now got those items.

11 MADAM CHAIR: I will -- I'll do so. And also
12 if you all think of any other topics that I didn't
13 list, please let me know so I can forward those to the
14 proper chairs.

15 MR. PITTS: Thank you.

16 MADAM CHAIR: Do you all have anything to
17 add? Committee chairs or any other members?

18 MR. SHINNICK: I was just looking over these
19 items that you had assigned us last year and noted
20 that Items 1, 2 and 3 in the Insurance Committee were
21 addressed in the supplemental reports. And I think
22 that's probably true with a lot of other folks that
23 they addressed much of the information, much of the
24 committee questions through the supplemental reports.

25 MADAM CHAIR: Right. And if you address all

1 the issues in the supplemental report, don't feel that
2 you have to address those issues in your future
3 committee reports because you've already done that.

4 Now, if you table an issue, on the other
5 hand, then please revisit those issues because we'll
6 need more information. Most people answered the
7 majority of those questions. And you may want to come
8 up with your own additional questions at this time.
9 Feel free to come up with additional issues. You can
10 do that.

11 Does anyone else have anything?

12 (No response.)

13 PRESENTATION: PROPOSED LEGISLATION

14 MADAM CHAIR: Well, at this time I'd like to
15 introduce our speakers for the day. Our speakers for
16 today are Matthew Capece and Kim Adkins. And before
17 they take the podium, I'll try to introduce them as
18 they approach.

19 Kim Adkins is a founding principal of Capitol
20 Strategy Group, L.L.C., as a government affairs and
21 business development firm with diverse client base and
22 through the technology sector, telecommunications,
23 engineering, and infrastructure firms. And their firm
24 specializes in complex problem solving in government.

25 MS. ADKINS: Good afternoon. Quite an

1 introduction. I appreciate that. I'm Kim Adkins.
2 I'm here today on behalf of the Midsouth Regional
3 Carpenters Council.

4 And as you all know, our group has worked
5 diligently, like everyone around this table, in
6 working to address this issue. And we want to commend
7 the Department for their leadership and allowing us to
8 be a part of the process. It's been very informative
9 and helpful --

10 MADAM CHAIR: Thank you for contributing.

11 MS. ADKINS: -- and everyone's insight has
12 been great.

13 We noted the initial recommendations of the
14 Report, including administrative penalties and
15 authorizing stop work orders directed at noncompliant
16 employers.

17 We have actually draft legislation before you
18 that reflect these exact recommendations. We have not
19 filed this legislation, the exact language of this
20 bill, because we wanted to get input of everyone in
21 this room. We understand we all need to work together
22 on this issue. By no means are we trying to go at
23 this alone.

24 We do have a caption bill that's being filed
25 in the event that all of us determined and blessed

1 some language that we decided we wanted to file this
2 session. The bill would amend the draft language
3 before you for consideration -- would amend workers'
4 comp code 50-6-412 to give the Department of Labor the
5 ability to fine construction employers for premium
6 fraud and stop work orders. The proposed language is
7 modeled after Florida law and recommendations from the
8 National Conference of Insurance Legislators.

9 And I believe prior to this meeting, everyone
10 had the first draft of the language we threw together
11 in response to the Report. Since then, we had a very
12 productive working meeting with the Department and
13 incorporated their revisions to our draft language.

14 And the revisions, since the first draft,
15 include making a new section (a) in its entirety. So
16 it would be amending actually 50-6-412 and creating a
17 new section (a).

18 We removed the knowing and willful language
19 throughout the bill. We revised language addressing
20 the administrative penalties for noncompliance and
21 instead put in set penalties.

22 We clarified earlier in the bill that the
23 stop work orders would only be issued to offending
24 employers, therefore, not shutting down an entire job
25 site.

1 And the rest of the language is really just
2 clean-up language per some of the feedback we
3 received.

4 And we really would appreciate your feedback
5 and insight on our draft language, and, I guess, for
6 any specifics, I would turn it over to Matt Capece.

7 MADAM CHAIR: All right. Thank you.

8 MR. BAILEY: I've got a couple of questions.
9 I don't know who -- would this -- or is this proposing
10 to do away with the current language of 412?

11 MR. CAPECE: No, no. Let's make this clear.
12 Make it absolutely clear. Let's say this got put into
13 place and you look at the Table of Contents for the
14 Code you would see 50-6-411, 412, 412(a), 413. So it
15 would be a brand new section, not replacing or
16 amending 412.

17 MR. BAILEY: The other question I have is:
18 If language is going to be proposed to authorize
19 administrative penalties, is it wise to just limit it
20 only to the construction industry?

21 MR. CAPECE: Our proposal focused on the
22 construction industry because that was -- that's what
23 gave rise to the Task Force. The Report cites the
24 construction industry as a major transgressor of
25 Tennessee law. So we're focusing in on that industry.

1 MR. BAILEY: I understand, but I'm just
2 saying is there any reason to limit it? I mean, if
3 we're going to put language in there to authorize
4 penalties, why not let it be to any employer that we
5 find -- you know, add to this?

6 MR. CAPECE: Well, if that's what the
7 committee wants, if that's what the principals want
8 and stakeholders, that would be fine.

9 There needs to be a political consideration
10 in all of this because the more industries you add on
11 to this type of -- you include in this type of
12 language, the more likelihood you will have opposition
13 to getting it at all. So that's something that needs
14 to be taken into consideration.

15 MR. BAILEY: The only thing about that is, I
16 would think that the employers who are playing by the
17 rules would be in favor of it. Just like the
18 construction companies who are playing by the rules
19 would favor it. So I would think that would hold true
20 across the industry sector.

21 MR. CAPECE: You would think. You would
22 think. And in my experience working on this issue in
23 other states, when we would initially start a piece of
24 legislation that increased enforcement capabilities
25 across all industries, the home health care industry

1 will come out against it. You've got -- FedEx is a
2 big player in the state of Tennessee. You're likely
3 to upset the trucking industry. So it's more likely
4 to stir up opposition.

5 And we think that this is a good place to
6 start. Construction industry is why we're here today.
7 And the employers in that industry need some -- the
8 good guys need some relief. And the sooner the
9 better. And it will be helpful.

10 MADAM CHAIR: Okay. And I know you're
11 already here, Mr. Capece rather. He's a
12 representative of the General President of the United
13 Brotherhood of Carpenters. A specialist in matters
14 involving payroll fraud in the construction industry,
15 and he does lectures on projects that are presented at
16 legislative hearings. Graduated from University of
17 Connecticut School of Law with a JD in labor law
18 studies. So, Matt, at this time if you would like to
19 go on with your presentation.

20 MR. CAPECE: I'd be happy to answer
21 questions.

22 MADAM CHAIR: Any questions? Any additional
23 questions?

24 MR. CAPECE: Yeah, Bob.

25 MR. PITTS: I'm trying to compare the

1 original bill back to the revised version. What is
2 the practical difference between Item 1 in the
3 original bill and what we now --

4 MR. CAPECE: I don't have --

5 MR. PITTS: -- have as (b)?

6 MR. CAPECE: I'm at a slight disadvantage
7 because I don't have the legislation in front --

8 MR. PITTS: She may be more capable than you
9 so whomever can answer the question.

10 MR. CAPECE: Okay. So you're comparing Item
11 1 --

12 MR. PITTS: In the original bill.

13 MR. CAPECE: -- to sub (b)?

14 MR. PITTS: Yeah, (b) in the revised.

15 MR. CAPECE: The intentionality -- the
16 intentional language, like knowing violation leading
17 to the penalties was removed.

18 MR. PITTS: The penalty was removed?

19 MR. CAPECE: No, no, no, no.

20 MS. ADKINS: The word knowingly --

21 MR. CAPECE: Knowingly, like knowingly mens
22 rea type stuff was removed from it. And there was a
23 section that folks thought was just too much verbiage.
24 Is this it here?

25 MS. ADKINS: Yes.

1 MR. CAPECE: Misrepresented or concealed
2 information pertinent to the application --

3 MS. ADKINS: That was taken out.

4 MR. CAPECE: -- blah, blah. Too much
5 language.

6 MR. PITTS: Is the one and a half --

7 MR. CAPECE: Yeah, that's next.

8 MR. PITTS: -- in there, effectively, in one
9 as well as in (b)? Or how did we get from --

10 MR. CAPECE: Well, there was an expression of
11 desire to have something -- the penalty more spelled
12 out. So what I did was, I went to 412, found one of
13 the penalty provisions --

14 The existing 412 has a whole series of
15 penalty provisions where an employer that's compliant
16 with an investigation and giving information to the
17 Department will pay a one and a half penalty. The
18 less compliant they are, the more it goes up, all the
19 way up to two and a half.

20 So what I did was I just peeled out that one
21 and a half percent penalty that the Department already
22 levies for having no insurance, and I just put it in
23 here and said the penalty is one and a half times, and
24 you subtract what premium was paid. So that's the
25 difference.

1 Okay. I see question marks.

2 MR. PITTS: This here is on top of what the
3 Department presently does; is that correct?

4 MR. CAPECE: No. This will be something --

5 MR. PITTS: Instead of?

6 MR. CAPECE: No. This is something new.

7 Right now they can do these penalties for having no
8 insurance at all. So what this says is, okay, this is
9 a brand new thing for the Department. They can have a
10 penalty for premium avoidance. But it uses the same
11 method. It uses the same methodology that's currently
12 used for not having insurance at all. I was trying to
13 do something that was more -- as much within the
14 Department's experience as possible.

15 MR. PITTS: I'm not trying to give you a hard
16 time. I'm just trying to be sure I understand the
17 process.

18 MR. CAPECE: Sure. I've got you.

19 MR. PITTS: Right now, if they fine someone
20 without insurance --

21 MR. CAPECE: Yeah.

22 MR. PITTS: -- they attempt to collect a
23 premium of one and a half times -- or a penalty --
24 whatever you want to call it -- an assessment of one
25 and a half times what the premium is. Is that

1 correct?

2 MADAM CHAIR: That's correct.

3 MR. CAPECE: Yeah. That's more of a question
4 for you guys, I think.

5 MR. PITTS: You would continue to do that,
6 but in addition thereto, you would also impose a
7 penalty of one and a half times that premium on top --

8 MR. CAPECE: Oh, I think I know -- oh, no,
9 no, no. I think I know where you're going. Let me
10 give you two --

11 MR. PITTS: I'm not going anywhere. I'm
12 trying to understand.

13 MR. CAPECE: No, no. I think I know your --
14 what's going on to the ability I can.

15 Let's say you had two cases. One case is the
16 employer has absolutely no insurance at all. 412
17 applies as it is right now and that's it except for
18 there's the possibility of a stop work order.

19 Now, as far as the monetary penalty, again,
20 the monetary penalty would be 412 as it exists now.
21 That's case one.

22 Okay. Case two, you have an employer with
23 insurance, but they're doing premium avoidance.
24 412(a) is what would apply for the monetary penalty,
25 not 412. I wish I had a blackboard.

1 MR. PITTS: Just give me an example.

2 MR. CAPECE: Okay.

3 MR. PITTS: We've got some people with no
4 insurance.

5 MR. CAPECE: No insurance --

6 MR. PITTS: We're going to charge them
7 \$1,000. I mean, that's one and a half times.

8 MR. CAPECE: Yep, that's it. That's it for
9 the monetary penalty.

10 MR. PITTS: Now we get over to the company
11 that is doing premium avoidance but paying some.

12 MR. CAPECE: Let's say the penalty was \$1,000
13 again, but they paid \$100 in premium.

14 MR. PITTS: Okay.

15 MR. CAPECE: The penalty would be \$900. That
16 would be the monetary -- complete monetary penalty.

17 MR. PITTS: So all the first thing does, it
18 does in effect what was under the old system by
19 following in those instances in which premium
20 avoidance was the purpose, correct?

21 MR. CAPECE: Yes. You got it. You got it.

22 MR. PITTS: I want to be sure people other
23 than me also understand it.

24 MR. CAPECE: No. I appreciate the question.

25 MADAM CHAIR: And, Matt, in your example, is

1 it the difference between the amount that was paid and
2 the amount that should have been paid?

3 MR. CAPECE: Right. Well, it's not so much
4 the amount that should have been paid. It's like the
5 penalty calculation minus what was paid. Except in a
6 no insurance case with this language, there's a
7 possibility of a stop work order.

8 Ashley, has a question.

9 MS. ARNOLD: Ashley Arnold, Insurors of
10 Tennessee. I don't know if this is better addressed
11 by Kim or Matt. Is this language that y'all crafted
12 independently or based on our discussions, or are you
13 taking this from other states, and, if so, what state?

14 MADAM CHAIR: First, the Department did not
15 draft that.

16 MS. ARNOLD: Okay.

17 MADAM CHAIR: Okay. I just wanted to state
18 on the record that the Department -- when the
19 Department received the information, it did have
20 reservations about it. And at this time I know that
21 the Department still has reservations so we would hope
22 that after this meeting, that all the Task Force
23 members can get together and have an opportunity to
24 review the legislation. Some of the members
25 haven't -- they may have had an opportunity to read

1 the original draft, but they haven't had an
2 opportunity to read the revised draft. And what I
3 would suggest is that we actually take a look at that,
4 that the members provide feedback to the Chair
5 Designee, and then I can summarize all that
6 information and work with the Legal Committee and come
7 up with a summary so that we can present that. Right
8 now we're really not --

9 MS. ARNOLD: I'm sorry. My question is: The
10 language that we're looking at here, is that
11 something --

12 MADAM CHAIR: I think it's a combination.

13 MR. CAPECE: It's yes to everything. Yes,
14 yes, yes, yes, yes. But as far as the state this was
15 modeled after is Florida and the NCIL legislation.

16 Kevin has a question.

17 MADAM CHAIR: Kevin? Kevin Hale.

18 MR. HALE: Kevin Hale. Hale Insurance.
19 Matt, as an insurance agent salesperson, I am
20 absolutely 100 percent behind any law that helps,
21 prevents -- all of those adjectives -- of closing
22 these loopholes, anything, tightening that filter. I
23 am 100 percent behind it.

24 I do, as an agent, though, have a problem
25 with words like you use in the third line right there

1 when you say is understated or concealed. That's two
2 different things completely. Let me give you an
3 example.

4 I had a masonry contractor that had a -- last
5 year 2011 -- payroll of \$500,000. He believes -- I'm
6 sitting face to face with him last week doing the
7 renewal. He says, I believe my payroll is going to be
8 in excess of \$500,000. He said, but the policy from
9 the insurance company had already been issued as a
10 renew of 500,000.

11 Now, has he understated the payroll and he
12 does not increase that payroll on the belief that he
13 might according to your law, Matt. I want to be sure
14 that we don't pigeonhole some folks that may be taking
15 advantage of an insurance company's generosity that he
16 knows he'll have to pay at audit.

17 MR. CAPECE: We understand and agree. We
18 understand and agree with your concern. I think those
19 issues need to be raised as part of this process. But
20 we understand and agree with your concern.

21 MADAM CHAIR: Bob Pitts.

22 MR. PITTS: Just sort of a continuation on
23 that --

24 MADAM CHAIR: Bob Pitts.

25 MR. PITTS: Yes, Bob Pitts. I'm not exactly

1 sure why the -- and nobody has to tell me -- why we
2 moved away from intentional or whatever. But you've
3 got to do something to this language that clarifies,
4 really, an unintentional violation from one where
5 there's malice involved.

6 Now, I'm not saying it has to be said that
7 way legally. But, you know, in an average year in one
8 of our -- at midyear we may have to request an
9 additional billing on 50 percent of the companies.
10 But it isn't driven by them trying to conceal what
11 their premium amount is. It's because their volume
12 went up from the previous year or it went down. And I
13 just don't want them to get trapped.

14 I've got nothing against the concept of
15 penalties. We've got to figure out some way that when
16 that is assessed that it's done for the reason that
17 you really want it assessed and does not become -- God
18 bless the Department -- an -- not that they would ever
19 intend to do it, but you get an unclear law and if
20 they abide by the law, we've got a problem. We're not
21 going to resolve it today, but it's just a point.

22 MR. BAILEY: In the talking points, the very
23 last bullet B says it does not apply to -- I'm sorry,
24 not B, but E. It says the legislation would not apply
25 to an employer to had an unexpected spike in

1 employment in the midst of a policy term unless that
2 employer failed to so notify his carrier during
3 renewal.

4 Now, that's in the talking point, but I don't
5 see that in the actual text of the legislation. Could
6 words similar to that be put in the legislation?

7 MR. CAPECE: We agree with your concern.

8 MR. BAILEY: Okay. But what I guess I'm
9 saying is that's in a talking point but it's not
10 backed up by the text of the legislation.

11 MR. CAPECE: Agree.

12 MS. ADKINS: We can do it.

13 MADAM CHAIR: Are there any more questions?

14 MR. MILAM: Jim Milam. One question. You
15 mentioned that a caption bill had been filed and if
16 this bill was tight to be presented under that. Do
17 you know what committees it'd go to in the House and
18 Senate?

19 MR. CAPECE: My colleague could better answer
20 that.

21 MS. ADKINS: It'd go to the House, Employee
22 Affairs. And the Senate, Commerce and Agriculture.

23 MADAM CHAIR: The same committees that the
24 Task Force --

25 MR. PITTS: Do you need to talk further or

1 can we ask a question about the next section?

2 MR. CAPECE: Sure.

3 MADAM CHAIR: Charles Herrell.

4 MR. HERRELL: Before we move along, on behalf
5 of Abbie Hudgens, she asked me to make sure that the
6 record reflected that the Division has found the
7 participation of both of you to be helpful, to be
8 useful, and to be valuable and wants me to express
9 thanks on her behalf.

10 MR. MILAM: I certainly second that.

11 MADAM CHAIR: I think we can all agree. This
12 is the first step. We have to start somewhere. And
13 so this is the beginning of that start.

14 I would just hope that the legislative
15 initiatives take into consideration what we've
16 included in the Report. We did include initial
17 recommendations about enhanced enforcement,
18 authorizing administrative penalties, authorizing stop
19 work orders directed at noncompliant employers. And
20 in addition, in Section 9, we went into more detail.
21 So I would hope that any legislative initiatives
22 include the information that we've already studied and
23 made recommendations.

24 MR. SHINNICK: I was going to talk to the
25 chair, and I was going to add that I think it would be

1 real helpful if after -- you have agreed on several
2 changes that need to be made as a result of comments
3 made here today. And if we could get a revised draft
4 of the legislation and then take a look at it as far
5 as the Task Force is concerned, I think that would be
6 helpful.

7 MR. CAPECE: Yeah. Okay. Is -- can I ask
8 the chair if there are any additional comments from
9 anyone? I think Bob had some additional questions.

10 MADAM CHAIR: Mr. Pitts? Do you have
11 anything else?

12 MR. PITTS: I think I know the answer, but
13 just for the record, the only other penalty is in
14 connection with violations of stop work order; is that
15 correct?

16 MR. CAPECE: Right, right. Yeah, yeah, yeah.

17 On Mike's suggestion, how do we proceed? I
18 mean, it's hard for us just from hearing what's being
19 heard around the table to --

20 MS. ADKINS: Originally, send comments to
21 Kim, and then we're happy however our chair wants to
22 proceed on that, any changes.

23 MADAM CHAIR: Okay. We'll go back to that
24 original suggestion. The original suggestion was
25 to -- do we have any other comments -- to provide the

1 Task Force members an opportunity to review this
2 because, again, most of them haven't had an
3 opportunity to look at the revised legislation --
4 proposed legislation.

5 Once we do that, we'll get the feedback from
6 the members, and I'll work with the Legal Committee
7 and try to summarize all that information. And then
8 we'll present that to you all.

9 MR. MILAM: Can I ask one more question?

10 MADAM CHAIR: Yes. James Milam.

11 MR. MILAM: In the part about the penalty for
12 violation of stop work order, it's directed at the
13 employer. And I was just wondering if previously in
14 the statute is the employer defined specifically
15 because I know we can get in to different people, you
16 know, the foreman on the job site versus the guy back
17 at the office who's the general manager or the
18 president of the company. And is that specified any
19 more --

20 MR. CAPECE: Yeah. It will be in the
21 definition section of the Code.

22 MR. MILAM: But I guess I'm saying when you
23 get into the criminal penalty, you want to be sure
24 that it's somebody who has authority and has been, you
25 know, properly informed of the stop work order. I'm

1 just thinking about these regional companies that --
2 you know, they have a lot of different branches. I
3 guess the stop work order is going to be handed to the
4 guy who's in charge on the site. Is that --

5 MR. CAPECE: Right. It would be posted on
6 the site.

7 MR. MILAM: So that's the person who's going
8 to be -- the employee of the person that's sanctioned.

9 MR. CAPECE: Right. You could say it would
10 be somebody who has supervisory authority, an agent of
11 the employer. Could it extend to an agent of the
12 employer?

13 MR. MILAM: Well, that was the person in
14 authority on that job sight.

15 MR. CAPECE: Yeah.

16 MADAM CHAIR: Mr. Locke?

17 MR. LOCKE: It is your intent that the
18 penalties be against the company, correct?

19 MR. CAPECE: Well, James Milam raises a good
20 point, like who's the company? If you have a Georgia
21 company here and a stop work order has been issued and
22 the boss in Georgia tells the project superintendent,
23 to heck with them, continue working, who do you want
24 to see? I mean, I wouldn't want to foreclose the
25 ability for a warrant to be issued against the person

1 who is the agent of the employer in this state who is
2 carrying out orders to violate the stop work order.
3 It's something to think about.

4 MR. PITTS: Wouldn't you normally do it
5 against whoever the licensed agent is for that
6 company?

7 MR. CAPECE: It could be the license -- who
8 is the license -- you know more about license -- or a
9 lot of people around this table know more about
10 licensing authorities and who holds the license for a
11 contractor. But there are subcontractors that don't
12 have licenses and don't need them. Not every
13 contractor is licensed.

14 MR. PITTS: -- the holder of the license.

15 MADAM CHAIR: And why don't we table that.
16 We have a number of attorneys here. We can all put
17 our heads together and look at that issue. Mr. Milam,
18 if you'll submit that issue.

19 MR. MILAM: Sure.

20 MADAM CHAIR: Do you all have any other
21 questions or comments for Mr. Capece?

22 MR. PITTS: Well, I'd like to clarify where
23 I'm coming from, if I may.

24 MR. CAPECE: Okay. Go ahead.

25 MR. PITTS: If you're going to start

1 assessing penalties against someone for violating a
2 stop work order, I think it's a pretty serious stretch
3 to start saying we're going to fine the superintendent
4 on the job site a \$1,000. It's the controlling entity
5 of that business, company, corporation, whatever, that
6 needs to be reached on financial obligations. Not
7 little employees of a construction company.

8 MADAM CHAIR: Yes. And that's something
9 we're going to look at. We'll have to take a look at
10 that to see exactly how it's done. In fact, Mike --
11 he and I talked with, actually, the Workers'
12 Compensation Administrator and Employment, and he
13 actually explained their process as to how they handle
14 stop work orders from beginning to end. And I'd like
15 to share that information with you all the next time
16 that we meet so we can have a better understanding of
17 how that's done.

18 And, Mr. Milam, and others, who have issues
19 or reservations or concerns about the first draft of
20 this legislation -- proposed legislation, please
21 submit that information to me. I'll be happy to
22 forward it to the proper committee chair and some of
23 the attorneys in the Department and we'll go from
24 there.

25 MR. PITTS: Since they're looking for advice

1 or comments, one other thing -- and I understand the
2 desire and I don't know that I really have a problem
3 with it -- sort of mandatorily imposing a fine of
4 \$1,000 a day for violating a stop work order.

5 But also I always have a little reservation
6 that whoever the regulatory agency is doesn't have
7 some authority in mitigating circumstances to be able
8 to mitigate or refine that penalty. I just make that
9 comment.

10 MR. CAPECE: That could be easily done. For
11 instance, if it said up to \$1,000 per day. That gives
12 them the discretion to do some mitigation. Right?

13 MADAM CHAIR: Well, it sounds like you all
14 got some really helpful information to help you to
15 start revising.

16 MR. CAPECE: Yes.

17 MADAM CHAIR: And like I said, we'll look at
18 information from all the members and the public, and
19 I'll put all that information together in a summary,
20 and I will provide that information to you all at a
21 later date.

22 MR. CAPECE: Excellent.

23 MADAM CHAIR: Great. Thank you.

24 All right. At this time let us take a
25 ten-minute break. And when we come back the only

1 thing we've got on the agenda are public comments.

2 Thank you. Ten minutes.

3 (Break in proceedings.)

4 PUBLIC COMMENTS

5 MADAM CHAIR: Everyone, if we can reconvene
6 please. The next item on the agenda is a public
7 comment segment. Is there anyone who would like to
8 make a public comment at this time? Do you have a
9 comment or suggestion for the Task Force? Matt
10 Capece?

11 MR. CAPECE: Okay. For what it's worth,
12 Tennessee has this mandatory e-verify bill -- law that
13 is in place and is going to start phasing in. And I
14 can tell you that when that starts happening, you're
15 going to see more of this type of activity as people
16 who are seeking to circumvent the e-verify law,
17 especially in the construction industry, are going to
18 be ramping up their use of labor subcontractors in
19 order to hide their undocumented work force. So you
20 should keep that in mind.

21 And, anecdotally, a colleague of mine in
22 Georgia has told me that the use of labor
23 subcontractors who violate the law has spiked after
24 the immigration laws were put in place in Georgia.
25 And there's a Pew study -- I think it's Pew -- a study

1 about the effects of Arizona's tightening up of their
2 immigration laws. And it had the net effect of having
3 less undocumented workers in employment but more
4 undocumented workers in the underground economy. So
5 beware.

6 Also, I cannot give up this opportunity while
7 I have all of these law enforcement folks sitting in
8 front of me. We have found in the construction
9 industry, not only in Tennessee but in other places,
10 but particularly in Tennessee, that states like North
11 Carolina and Georgia are exporters of these types of
12 practices and are the subject of our meetings here.

13 And to whatever degree of comedy or
14 relationships or working together with your peers in
15 those states, it will do you some good. Because if
16 you can tighten the laws up here and punish people
17 here when they violate the law, but if they're coming
18 up from out of state and playing catch me if you can,
19 more so than you are regularly, and those people will
20 just get up and leave and go back to Georgia or North
21 Carolina before anything more serious can happen to
22 them. And it would be nice if in North Carolina and
23 Georgia there was someone waiting at the border for
24 them, those states as well.

25 MADAM CHAIR: Mr. Bailey?

1 MR. BAILEY: Just one thing on the e-verify
2 law, which is currently in effect for employers of 500
3 or more employees. The one thing that may be a little
4 bit different about Tennessee's law is that it also
5 requires the employer to obtain one of the 11 pieces
6 of documentation from a nonemployee as well as an
7 employee.

8 And that, as I understand it, was aimed at
9 the subcontractor or independent contractor to verify
10 that even if you're using an independent contractor,
11 you still have to verify they are authorized to work
12 in this country. I don't know that the other states
13 have that provision in their law. I don't think they
14 do.

15 MR. CAPECE: That's a good addition to
16 Tennessee law.

17 MADAM CHAIR: Any other questions? Anyone
18 else like to make a comment? No other comments?

19 ANNOUNCEMENTS

20 MADAM CHAIR: Okay. Well, I tell you what.
21 We'll take a break from it, and we'll go to the
22 announcements. I'd just like to announce two things.
23 Both Jeanie and Sue have copies for us. We have been
24 successful, thanks to Lynn Ivanick and Dan Bailey and
25 the committee members -- we have established a fraud

1 tip line.

2 The fraud tip line is 1-888-243-7283. And
3 they're passing some paper out now which has the fraud
4 tip line on it as well as the Employee
5 Misclassification Advisory Task Force website. So we
6 are up and running. If you call this number today,
7 someone from our Workers' Compensation Division will
8 answer the phone and transfer the call accordingly.

9 As for the website, we have a home page and
10 the committee and supplemental reports have been
11 linked. Other information, what was previously placed
12 on the test website, the committees will, at some
13 point in the future, take a look at that information
14 and let us know whether or not all the information is
15 accurate and whether or not there are any legal
16 constraints. And we'll go forward.

17 But if anyone asks, please refer them to the
18 fraud tip line. Also refer them to the EMATF website.
19 And if you suspect that someone is committing fraud,
20 misclassifying your workers as independent contractors
21 instead of employees, they don't have workers'
22 compensation coverage, any premium avoidance issues,
23 please refer those to this number. And this is our
24 start.

25 And I don't have anything else. All right.

1 MR. BAILEY: The last time I looked at our
2 website, it still had a lot of stuff from
3 Massachusetts, their documents. Is that still --

4 MADAM CHAIR: No. As far as I know -- Lynn,
5 you might be able to answer this -- we only have
6 the -- the test website had additional information,
7 but this website does not.

8 MR. BAILEY: Oh, okay.

9 MADAM CHAIR: This only has the home page and
10 the links to the --

11 MR. BAILEY: So we'll add things as we go.

12 MADAM CHAIR: Yes. And we will be placing
13 the Annual Report on there and also we plan to place
14 the transcripts from the hearings -- I'm sorry -- from
15 the meetings that we're conducting. And if there's
16 any additional information you all would like to have
17 posted to the website, just let us know.

18 Do you all have anything else? All right.
19 This meeting is adjourned.

20 (Meeting adjourned.)

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REPORTER'S CERTIFICATE

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

I, M. Elizabeth Miller, court reporter and notary public in and for the State of Tennessee at Large,

DO HEREBY CERTIFY that the foregoing transcript of the proceedings was taken at the time and place set forth in the caption thereof; that the proceedings were stenographically reported by me in shorthand; and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office, this 6th day of February, 2012.

M. Elizabeth Miller, LCR #259
Notary Public
State of Tennessee at Large

My Commission Expires: June 30, 2012 My License Expires: July 3, 2012