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Workers' Compensation and the NC Industrial Commission*

BALANCE: MODERATOR, PROFESSOR BALANCE**
GRIFFIN: PANELIST, COMMISSIONER MYRA GRIFFIN***
JONES: PANELIST, ERIKA JONES****
SPRAGUE: PANELIST, DREW SPRAGUE*****
M/F: MALE/FEMALE SPEAKER

M: For our final panel this evening, we've put together an amazing group—diverse group of experts from workers' compensation in the North Carolina Industrial Commission. Starting on my right here, we have, as some of the students here probably know already, Professor Balance. We have to his right, Mr. Drew Sprague of Sprague Law. To Mr. Sprague's right, we have Commissioner Griffin of the Industrial Commission, and to her right, we have Ms. Erika Jones of Erika Jones Law. And I'm going to hand the time over now to Professor Balance, and he's going to kind of take it over from there.

Balance: Great. Thank you, Logan. Appreciate it. Thank you, guys, all for coming. It's late on a Friday afternoon, have a 3:30 to 5:00 on a rainy Friday afternoon, so we very much appreciate you guys being here. I think what I—what we want to do first is I want to have each of the panel members introduce themselves, tell you a little bit about themselves, and then we'll talk a little bit about the commission and about workers' comp. So, Drew, if you want to go ahead.

Sprague: All right. So, I am Drew Sprague. I have my own law firm here in Raleigh. It's right down the street on New Bern Avenue. I went to law school at Tulane University in New Orleans. I was—I happened to be at Tulane when Hurricane Katrina hit, so I was an evacuee for a little bit, and I attended law school in my home state of South Carolina for a little while. And then, upon graduation, I came up here to North Carolina.

* Panelists made edits to this transcript.

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I worked at a civil litigation firm and then after a couple years of that, I opened up my own firm. So, I'm sort of a general practitioner. I do a certain area of the Industrial Commission. I'm in the—I'm the court appointed of the day once a month for the contempt docket, and I can tell you a little bit more about that, but that's sort of my tie-in with the Industrial Commission, and I'm happy to be here today, and look forward to talking to everybody.

Griffin: Good afternoon. Thank you, students, for being here at 3:30 on Friday, like he said, raining. This is the best one yet, we hope. [LAUGHTER] I'm Myra Griffin. I'm from the Industrial Commission. I'm the vice chair of the commission. I'm a graduate of UNC undergrad, and North Carolina Central School of Law in Durham. I started my legal career at the Industrial Commission, so I began as a law clerk to a commissioner. I've been a special deputy, which is an administrative position. I've been a deputy commissioner here, an officer, and then I was appointed by Governor Cooper to serve as the vice chair of the commission.

So, I'm excited to be here, and with me, I brought Rachel Brunswig. She's my law clerk. She prepared this awesome PowerPoint for me yesterday, so I want to give her _____.

Jones: Good afternoon. I'm attorney Erika Jones. I went to undergrad at North Carolina A&T State University and law school at North Carolina Central School of Law. I started criminal practice in Durham, quickly realized I needed banking hours, and so I believe you just—I might have taken—you were appointed to the Attorney General's Office, and I started clerking at the Industrial Commission. Left there, did insurance defense for about nine years. Switched sides twice—went and did plaintiff's work. Some people say I moved to the dark side, some people say I left the dark side, but went and did plaintiff's work. Went back into defense work for a short period of time, and now I have my own firm here in Raleigh, handling primarily workers' compensation. Wouldn't say I have a general practice, but I do handle a few other things.

I am a certified mediator where I primarily handle workers' compensation claims, and hopefully we will be able to bring all of this knowledge together with you all this afternoon.

Balance: Great, thank you, Erika. And I am Michael Balance. I am in private practice here in Raleigh. I was born and raised in Raleigh, believe it or not. I went to NC State for undergrad. So any State—we've got some Wolfpack fans out there. Went to Carolina for undergrad. Have been practicing almost nothing but workers' comp law for, oh, gosh, 22 years now, as you can tell. And about 15 or 16 years ago I started teaching as an adjunct, and so I teach workers' comp law and practice here at Campbell. See—I'm seeing some students here today, so thank you very much for coming. If

you—and if you haven't taken my class, or have the opportunity, let folks know.

I love teaching, I love helping folks in workers' comp. I mainly do defense work, so I guess I'm—am I on the defense—am I on the dark side now, Erika? Or—[LAUGHTER]

[OVERLAPPING—INDISCERNIBLE]

Yeah, I mainly represent employers and insurance carriers in defense of workers' comp claims, and I'm with a firm here in Raleigh called Dickie, McCamey & Chilcote. I run the Raleigh office, and I think we now have 20 offices in 11 or 12 states. But thank you guys very much for being here, and for letting me be the moderator. These guys are—you're very lucky to have these folks here to talk with you.

Real quick, before we kind of get into things, so how many folks here are students? Pretty much—okay. Fair—most every—okay, how many 3Ls? Most everybody 3Ls? We've got a few 2Ls. Okay, all right. You can still take my class. [LAUGHTER] Practitioners out there? Got some practitioners. All right. Folks from the state? Okay. All right, very cool. We have one dean over there, I see. [LAUGHTER] All right, well, very good.

Well, what we hope to do is—and the reason I ask is because we hope to really talk, you know, gauge our presentation of you guys, particularly of students in terms of thinking about workers' comp, learning a little bit about workers' comp. We understand that not all of you will go into practicing workers' comp one day, but it's important to know a little bit about the Industrial Commission and about workers' compensation.

So, with that in mind, the first thing we want to do is Commissioner Griffin and her law clerk have put together a really good slide show to just teach you a little bit about the Industrial Commission, and about how workers' comp works, and why we have it. So, I'm going to turn the floor over to her to let her do that.

Griffin: Okay, when I started in the commission, I had no experience or any idea what the Industrial Commission was. I had a friend that worked there, and he was leaving, and he suggested I come in and interview with the commissioner for a position, and I was fortunate, and she hired me without any experience. So, I'm saying all this as a hope that—Professor Balance, I've had him in court before. He's excellent. I recommend that you take that class. It's an interesting field. It's a lot—you learn a lot. It's unique. It's a nice niche. You can do a lot with it. You can go between the state, defense work, plaintiff's work, administrative work, so I strongly urge you to consider. I would like to see some of the students here eventually practice in front of the commission. I think you would enjoy it.

The Industrial Commission, we handle workers' compensation claims and start tort claims. That's the primary two acts that we govern. The workers' comp act didn't always exist. It came about due to the Industrial Revolution. Workers began to be suffering more significant injuries. And under common law, prior to the Workers' Comp Act, the employee had the burden of establishing that was the employer's negligence caused the injury, which was very difficult and hard for them to recover. And the employer had a way to escape liability by the defenses of contributory negligence, the fellow servant exception, and the assumption of the risk doctrine. So, as a result, very few injured workers were able to recover.

So, and—switch slides, I think, between—let me see—with workers' compensation legislation, the General Assembly decided that to help the injured workers, they didn't want to have the injured workers have to prove that the employer was at fault, or that they were negligent in the injury. And by doing this, the injured workers also had to give up potential greater recovery if they were to sue under common law.

So—and next slide. Between 1911 and 1915, 32 states passed workers' comp legislation. North Carolina, we didn't pass our legislation until 1929. And then in 1949, the General Assembly decided that the Industrial Commission was the best place to hear North Carolina tort claims, and that's when negligence against the state. So, any situation in which you're suing the State of North Carolina for negligence, the Industrial Commission has exclusive jurisdiction of both workers' compensation and state torts.

We also have—some other areas that we have exclusive jurisdiction on, we typically don't have too many cases in those other areas, because we primarily have the Workers' Comp Act and the State Tort Claims Act. But we also hear the Law Enforcement Officer, Firemen's, Rescue Squad Cases, Workers' in Civil Air Patrol Members' Death Benefits Act. That's a long title. We hear cases involving childhood vaccine-related injuries. We also were—a few years ago, maybe about five years ago, the eugenics statute was put in place by General Assembly and we managed all of those cases, as well. And we also hear the cases in which people are compensated for erroneous convictions of felonies. So, we decide if they're going—entitled to a recovery, and we decide the amount on those, but those are few and far between. The bulk of our work is the Workers' Compensation Act and State Tort Claims Act.

And as Mr. Balance is with the defense firm, I'm assuming you don't do any tort claims work?

Balance: No, I don't do any tort—state tort claims work. I did some way back in the day, when I did plaintiff work.

Griffin: Primarily, the Department of Justice handles the defense of those state tort claims, but there are some other attorney—other firms that

handle them. I believe UNC hospital is unique. They don't use a DOJ. They hire private firms to handle malpractice law suits against the state hospitals. The Industrial Commission is a quasi-judicial administrative board. So unlike Superior Court, and the general—we're not a general court of justice. We're created by statute. We only have the authority to administer the Workers' Compensation Act, and the State Tort Claims Act, and the other few acts that were identified.

So, we can't hear criminal cases, and we can't hear personal injury. We can't hear constitutional issues, and other things that—employee issues. Like, I've been fired, I was hurt, and they fired me. That's not relevant to the Workers' Comp Act, so we don't hear those cases. And most of the time when people think of workers' comp, they think employment law. They get those two areas confused, but they are completely separate.

The Industrial Commission, as it's created by statute, the governor appoints commissioners to six-year terms. Those commissioners must be confirmed by the joint General Assembly. The governor designates one person to serve as chair. It's kind of like if we were in a judicial—full judicial—it would be like chief justice. So, the chair of the commission is responsible for all the hirings, and personnel, and policy-issuing decisions that are made in the Industrial Commission. So, the chair appoints—we have 22 deputy commissioners, and the chair appoints those 22 for terms of six years. And both commissioners and deputy commissioners are limited to two terms of six years. The deputies do not have to be confirmed by the General Assembly. Once they're appointed by the chair, they begin their serve.

Who's required to have workers' compensation insurance? So everyone that's—every business is not required to have workers' comp. If you are a business and you employ three or more employees—regularly employ those, then you're required to have workers' compensation insurance, or qualify as a self-insured employer. And Mr. Balance, do you represent self-insureds, as well as self—[OVERLAPPING]

Balance: I do represent self-insured employers, yes. So—and regarding that, any—every employer who qualifies under the state, who's—regularly employs three or more, is required to either obtain workers' comp insurance, or to be able to self-insure. So, some big companies will—the Walmarts, the GEs, the ones that are well-funded, they generally self-insure, meaning they pay for it themselves. They may have somebody else administer it, but they don't buy an insurance policy. But I do probably about half and half.

Griffin: Every person engaged in employment is considered an employee. So, your apprenticeships, express or implied, oral-written contracts with your employees, people who are lawfully or unlawfully

employed. So, we have people who are employers and say, “Well, this person—I have four employees, but they’re undocumented, so they don’t count.” That’s not how it works. They still count as employees. Minors.

A lot of people don’t realize that temporary employees are considered in our count for the three or more. Part-time employees are considered, so we have lots of cases where people—when we check their workers’ comp policy, they’re like, “Oh, I don’t have workers’ comp because I have three part-time employees, and all three are—they’re my sons and daughters. I don’t have to have insurance.” That’s not correct, and seasonal workers also count.

And so, whether or not you should have insurance is very important. You need to—I say instead of just talking to an insurance adjuster, it’s always best when you’re starting a business to talk with a lawyer, and find out the types of coverage that you need to protect yourself, because there are significant penalties and possible prosecution and jail time for failing to carry workers’ compensation in the State of North Carolina.

And the commission has become very active in cracking down on employers who do not carry workers’ compensation insurance, because they’re putting their employees at risk. And if they don’t have coverage and their employee is severely injured, then how is that employee going to receive medical treatment? Who’s going to pay benefits? You know, that employer—employee loses his home, he loses his car, his family life is destroyed because his employer didn’t carry the insurance he was required.

And Mr. Sprague will be able to talk about that more, because Mr. Sprague is our attorney of the day, and he hand—represents those parties who somehow managed—neglect, failed to secure workers’ compensation insurance.

Jones: And this kind of ties in where earlier Judge Mann was discussing the fact that even if you do not decide to go into the area of workers’ compensation, that something like this may cross your desk. So, if you decide I want to handle only employment law, and someone comes into your office and they decide they want to open a business, and they’re going to hire five people, well, if you don’t let them know that they need to obtain workers’ compensation coverage, you are providing them a disservice.

So, even though you may not fully go into workers’ compensation, you will need to know what type of employee they have, why they need coverage. May not be able to directly show them to coverage, but definitely, you want to be able to show them which direction to go into, who they would need to contact, can they go through Builders Mutual? Can they go into kind of a fund or something like that, in order to get insurance? So, you definitely want to be able to give that type of advice, whether you’re handling workers’ compensation claims or not.

Griffin: Yeah, and I agree with that. And also, in addition, if you have a personal injury, you're a personal injury attorney, and you're representing a client, and they were driving for work and they're injured, and you're suing the tort fees or the person who's driving the car. There's also a possibility that there's a workers' compensation lien on any recovery. So as an attorney, even if you're not practicing workers' comp, that's something you ought to be aware of. But Mr. Balance, I'm sure, has gone after some work—or some liens for people for failing to protect his client's interest.

Balance: Yeah, and I think that's—you know, even if you don't end up practicing in workers' compensation, I think there are a lot of ways that just knowing a little bit about workers' comp and being aware of certain things can really help you. And especially in terms of setting up a business, being aware of that, and not just listening to agents, as Commissioner Griffin said, because a lot of times, the agents don't actually know what the law is. But they are advising, you know, people when they're buying policies. And they're like, "Oh, you don't need workers' comp insurance," and then somebody gets hurt, and then it turns out they should have had it.

And I think Commissioner Griffin is going to tell us what can happen to somebody if they're an employer and they should have had workers' comp and they didn't.

Griffin: Yes, so I did forget to mention, during my tenure at the commission, I also—I left the commission only to become their legal counsel through the Attorney General's Office, so I prosecuted the penalty cases. So, I prosecuted the employers who failed to carry workers' compensation insurance across the state, and employee fraud cases.

So, failing to carry workers' comp, if it's negligence, it's a misdemeanor. There's also a civil penalty assessment that was \$50 a day, and it's been changed recently. It's much less. And willfully failing to carry insurance, you are aware—if we can establish through evidence and testimony that you were aware you were required to have insurance but failed to do so, then we can hit you with a Class H felony for obtaining property by false pretenses, and then that's subject to prison. If the prosecutor—the local prosecutors will move forward.

So, you have to hire a criminal attorney. Now your mess has turned from the civil penalty. You've got to get Mr. Drew to help you out on the civil penalty side, and then you've got to turn around and hire a criminal lawyer to keep you out of prison. So, it's a major headache, and you will also have to pay—even though you didn't have insurance, you had an injured worker, and you don't have insurance to pay, well, guess what? The—you're going to pay the insure—you're going to pay what the insurance would have paid as an out of pocket—out of your own pocket. So, they're going to come and get a judgment against you, and take a lien on your home and your

property. So, it's a big deal if you don't carry workers' compensation insurance.

And unfortunately, there are some catastrophic injuries, just like construction is usually with the most—construction, roofing industries, logging—

M: Tree—tree removal.

Griffin: Tree removal, those—we find a lot of employers who don't carry workers' compensation insurance, and those are usually people who are injured, paralyzed, you know, or they're killed, and so, you have significant—you know, hundreds of thousands, possibly a million-dollar claim against you individually. So, it can ruin your personal life, and business life, and your family life. So, we're trying to stress that in the commission by training and providing information across the state through the Chamber of Commerce about why it's necessary to carry workers' comp, and we provide information on our website, and we submit information to people if they have questions about having coverage.

Sprague: And if I could kind of jump in here at that point, too, and say, you know, a lot of you guys are going to be going out, and you're going to be doing business work, or employment work, or other types of things. You may have family members who run businesses. And they're going to say, "Well, you know, I don't know about buying workers' comp, you know. It costs money, and we've got to pay that." What you want to be able to tell them is, say, "Look, yes, it's going to cost you something for the premiums, but if somebody were to get hurt"—like Commissioner Griffin were talking about—"they can come for your house. They can come for your boat. They can come for your car. They can come for your 401(k). They can come and take everything—all your savings away, because that injured worker deserves to be paid, and they have the right to be paid."

So, it's really important that you talk long and hard with your clients, and make sure that they understand the risks of not getting workers' comp, because I would venture to say that most of the time, it's not worth that risk.

Griffin: Yeah. When you get your workers' compensation insurance, you get an experience attorney, like Mr. Balance, that's going to represent your interest, and if you don't feel that that person was injured, or there is something that you dispute, you have someone who's trained and skilled and can represent your interests and protect you. If you don't have workers' comp, then you've got to go out and try to find somebody who's willing to help you, if anybody is willing to help you, and they're going to want their money up front. Where you've already paid your insurance, so that pays for Mr. Balance to appear and give you a good defense.

Balance: I think there was a question.

F: Yes, I'm not a lawyer, so this will probably sound like a dumb question to you, but you were—just everything you just said, just now, about how they can come for your assets, basically.

Balance: Right.

F: I don't—I just—a little something I'm not sure and maybe the person just gave me false information, but I was told something, and that was that if you get a judgment, just in general, against someone else, that, like, North Carolina had some kind of really strict, like, debtor's laws or something, where you couldn't take people's primary residence, or retirement plan, and that they were really protected from people, basically, honoring those judgments that they got against them from a judge in a court of law. Is that not true?

Sprague: That's actually a unique perspective, and I can kind of talk to that a little bit, being the person that handles a lot of people coming in who didn't have insurance. If you're talking about a civil claim, there is a lot of—

F: Yes.

Sprague: —there is a lot of protection for civil claims to the person who owes a debt. You've probably heard of the concept of being judgment-proof when—once you get a judgment, in order to execute on that judgment, you have to give the person who owes the debt a notice of exempt property. And in North Carolina, I can't remember the exact details, I think it's about \$35,000 in equity in your house, your car, all these things are exempt properties. So I would say 80 to 90% of people are almost judgment-proof, because they don't have a lot of assets beyond that.

However, with the Industrial Commission, it's a different story, because you—if you get a debt and the commission determines that you owe this debt, or you have a judgment against you and it becomes a final order, that judgment lives forever, so you keep coming back. And if you're not in compliance with that order, they can hail you back into court, and charge you with contempt for not being in compliance.

So, where a civil judgment, you may be able to sort of dodge, an Industrial Commission judgment lives on forever, and you keep getting brought in.

F: Thanks for explaining that. Yeah, I didn't understand the difference.

Griffin: Well, and the difference, Industrial Commission, we have a particular statute that addresses penalties, that gives us authority to penalize a person individually. And so, it's a penalty. It's not the same as a civil judgment, and so we have a statute that allows us to do—to go after the person individually, as well as his—the company itself. So, not only can we assess a penalty against the employer that's incorporated, then we can go after the president, the person in the company who's responsible for get—

failing to have workers' comp. And that usually is the president of the company. That person individually is also going to be held accountable.

So, we have two penalties we actually hit you with. So the company itself might be hit with \$100,000 penalty, and then we might come after—in addition, the individual gets hits with the value of the claim, so if the claim is with medical treatment, the person died, it might be \$500,000. That's now—we're coming after you on both ends.

To say all that, we also have permission within the statute to negotiate and reduce that significantly if the injured worker case is resolved. So, if you were able to work out some kind of settlement with the person who was injured, the commission is more than likely going to reduce that penalty very significantly to an amount that's feasible and you can handle. But if you don't make that plaintiff whole, or resolve that, the commission is going to keep coming for the full amount until that's resolved.

Balance: Yeah, and the statute that both Drew and Commissioner Griffin were referring to, it—there is no protection, so there is no, like, corporate insulation. I mean, it just pierces straight through the corporate veil, and it literally says it can go after the company or any individuals who have the power to bring the company into compliance. So, that's the—that is the scary part. You don't get to just say, "Oh, well, my company is bankrupt," you know, and walk away. Uh-uh. They're still coming after you.

Griffin: And that's because if we—if the commission didn't come after the employers, then these employees who were injured, they would then be forced to be kind of wards of the state. The state is going to have to pay for this. Somebody has got to pay their health benefits. Somebody has got to pay their disability, so it's the employer's responsibility if they allow their insurance to lapse or not have it. So, that's why the state—it's helping the state, as well. The state doesn't want to have to pay for all these injured workers who the employer received all the benefit from the work that was done by these people.

Rachel for the slide. So that's the six of us. [LAUGHTER] We're down one room. Actually, we—the governor just nominated a commissioner, so he has to go through confirmation process, and that takes a while, so hopefully we'll be up—back up to six before the end of the year.

Here's just some numbers generated by the commission. In 2017, '18, we had—over 63,000 cases were filed. We had 606—78 state tort claims filed. I don't know—did that include the inmate torts, because that's probably—it did? So, we also hear the Department of Correction, the inmates file tort actions against the state for lost property, assault, various other sundry—the things. So we have lots of inmate torts that we hear, and we—actually, some of the deputies have to go to the prison to hear those

inmate torts, and we also are taking advantage of equipment like this, where we—the different prisons from around the state, they beam in the person and we're not actually having to go there, so that's kind of cool.

The deputy commissioner hearings, we had over 2,000 heard last year. The penalty and contempt matters which we were discussing, we had over 2,000 matters resolved at the deputy commissioner level. And then with regards to appeal through the full commission, we had 599 from the 2,000 deputy commissioner hearings, so about a fourth.

Couple of my settlement agreements, we approved about 12,000 settlement agreements between the plaintiffs and defendants who worked together—thank you. We had over 9,000 cases referred to mediation, so it—the Industrial Commission, when you file a claim, a Form 33, we send everyone to mediation. They can opt out, but you've got to get a reason for opting out. But we try to encourage everyone to mediate the case, at any point, but specifically before we get to the litigation stage. And anyone talk anything about mitigation?

Balance: Erika might be able to talk a little bit about mitigation. Okay.

F: Oh, yeah.

Jones: Oh, definitely. I have been on both sides of the table, so I've mediated as an insurance defense attorney, as a plaintiff's attorney, and I'm also a certified mediator. So in wearing all three of those hats, coming in, I definitely encourage everyone to have an open mind. We—you come into a room, and a lot of times, it's the first time the plaintiff has ever been in a situation where they need to sit down and resolve their claim. Sometimes, they bring their cousin, aunties, uncle, friend, and so, a lot of times you realize as the mediator, "Well, you know what? I really don't have to convince Mr. Jones to settle. I need to convince Mrs. Jones that Mr. Jones needs to settle his case." So, it really depends on the dynamic of what's going on.

A lot of times, though, what I try to explain across the board is that everyone, at some point in time, wants to be heard. That injured employee may just want to know that I worked at Food Lion for 20 years and I was injured, and I feel like everyone forgot about me. Sometimes they just want to be acknowledged. So I always came in on the defense side, and at times, depending on the facts of the case, would just, you know, thank them for their service. And I think sometimes that would help get the case settled, just being amicable and making sure that people understood that it may not be tied to the fact of you were a great worker. It's tied up in the law. It's tied up in some type of issue or dispute that has nothing to do with the fact that you were a great worker.

Vice versa, some people come into claims and they think—unfortunately, if their case was denied, they may have lost their home. They

may have lost their, you know, car, and everything that they owned, and so they want pain and suffering. They want trouble damages. They want punitive damages. Well, that is not afforded under the Workers' Comp Act. And so having those discussions prior to with your client, and especially—and if it hasn't happened prior to mediation, that is my first session. I'm explaining to both sides—they just want to be heard or you have to understand, you're not allowed to obtain those types of—that type of recovery or compensation during this claim.

And so, once we're able to kind of get that sorted out, a lot of times we're just exchanging numbers. I'm in my flats and going back and forth from room to room, negotiating and trying to get in—to get things settled. And fortunately, working at the IC, and working on both sides, I try to bring all of that in together to try to help people work their claims out.

Griffin: And I—when I started at the commission, mediation was just—we were really formally starting a mediation practice, and it has significantly reduced the number of hearings that we have. I think that most parties are pretty pleased with the mediation; it really affects the Industrial Commission.

Jones: Oh, yes.

Balance: Yeah, and those statistics are always interesting to me, that before they go to hearing, some 80—almost 80% of cases settle now. So, it's a huge part of the practice, and if you like to negotiate and like to settle, then—and like to work with other sides, and be collaborative, then it's a really good area of practice.

Griffin: And probably with the cases that we get in hearings are—there's really a true dispute that—and there needs to be a hearing. I think things that we used to see—common practice, we'd have hearings on every single issue and dispute. Now, the parties are able to resolve a lot of that

Industrial commission, about maybe five years ago, formally we would just create our own rules and adopt them and put them out. We are now under the Administrative Procedure Act, it requires us to go through multiple steps and public hearings, and give notice, and to draft and implement new rules, and we get information from all the parties. And this is probably a better practice, because before, you know, we would look at something like, "Oh, we need to change a rule. Let's just do this." And we'd do it and then the people would say, "This is the worst rule ever. Because of this, now we're having to spend so much money." It's not the intent that we had—didn't filter down to the parties. So now we get information and we listen to all the parties when we're preparing our rules. We just did some rules recently. I don't know if you—did you file any objections to our rules recently?

Balance: No, no. [LAUGHTER]

Jones: I'm surprised.

Balance: If I did, I'm not going to fess up to it right now.
[LAUGHTER]

Griffin: So it's an interesting process—it's if you do administrative law, this is something that you have interest in. The—we appear in front of the Rules Review Commission. We have to go, and we have to present our rules, and they—it's 11 commissioners, and they make sure that we're compliant with all the statutes and laws. And they listen to the parties that contest or dispute what we're doing, and they take the information, and they rule and decide whether or not we can implement a new rule. So, it's a great process. It's very interesting. I've learned a lot about rules now that I'm on the commission. I didn't—when I was a deputy commissioner, we didn't have any interest in it, but now I know a lot about it, so.

So, the section of the commission—the full commission is sort of like the appellate level of the commission. There are six commissioners and we sit in panels of three, and we review appeals from the deputy commissioner level. So, say if Mr. Balance and Ms. Jones, they had a hearing, the deputy ruled in favor of Mr. Balance. Ms. Jones is going to appeal it, and then we're going to look at the record, and we're going to—it's *de novo*, basically. We make our own findings of fact. We're not bound by the deputy's findings on any issues, or findings of credibility. So, we look at the code record, we don't have any live witness testimony at the full commission level. But the parties are allowed to appear in front of us, and they each get 20 minutes to argue their side. The appellant gets reserved some rebuttal for that, and we issue written decisions in due course.

The deputy commissioner—there are 20 deputy commissioners that hear cases in the regional offices, and we have two deputy commissioners—one's over mediation and one's a deputy commissioner of the claims department, so they don't hear cases. Our offices, generally—before about, maybe, five years ago, everyone was stationed in Raleigh. We've now opened regional offices. We would travel across the state. I would hold hearings in Asheville one week. The next month, I might be in Wilmington, living out of hotels. It sounded fine at first, and then you get tired after, like, four days, and you know, you're not staying at top-notch hotels, unfortunately. No Ritz-Carlton will be approved by the state rate.

But our offices—our main office is in Raleigh. We have the most deputies there, but we have two assigned to Asheville, four Charlotte, two Wilmington, two Greenville, and two Winston-Salem, and they have support staff there.

And we have an executive secretary's office in which they handle all the administrative issues, the cases that haven't been assigned for hearing.

And we have the claims administration section, which is the beginning of filing your claim for hearing. You've got to—that's where it all starts. And then we have an insurance compliance and fraud investigation service. That's—we're talking about the penalty section. We had the mediation, which is a small group, but they are very powerful. And then we have our clerk's office. We started a clerk's office about three years ago, so we have a clerk where all filings go through, which is—a central location is much better than the way we had it organized before.

And this is a flow chart. I can't take credit for it, but it's very nice, [LAUGHTER] and the colors, and it explains how when—your claim starts through claim administration, you file your Form 18, your 19, your claims, and it just go—shows you the different path it can take. And so, that's kind of how our little flow chart goes at the commission.

Jones: And just so you know, once you start practicing workers' compensation, we don't use words. We speak in form numbers, and so I can have an entire conversation with everyone on the panel and say I filed an 18, somebody filed a 19, I kicked my 33 over. They never filed a 33. I am waiting for it, be—and it will be totally in—

Balance: Erika, I'm filing a 61—[OVERLAPPING] [LAUGHTER]

Jones: Because I wanted to file a 60, so.

Griffin: _____ and so forms are very important at the commission, and they're by statute in our rules, as well, so the forms have significant meaning. If you file the wrong form, you can really mess your client up. So it's important for their attorney to know when they need to file the forms, and which forms to file, and how to complete them with the right information. See a lot of forms that are very vague.

So, the fraud investigation and compliance, their job is to monitor compliance with workers' comp. So, they can go to any employee—they can send a request, or they can actually go out and just say, "Hey, I want to see your insurance coverage," and the person has to produce that. And we give them, like, 30 days. If they don't produce the insurance based on our records, we interact with several other state agencies to find out whether somebody's required to have insurance.

So, we got Employment Security Commission records. We have other corporate filings that we can determine whether somebody has three or more—should have three or more employees. And so if they don't respond with the coverage, then we will assess the penalty by statute. And during 2018, '19, we have collected over \$8 million in penalties from employers who didn't have workers' compensation insurance. The commission does not get to keep that money. That money is sent to the Civil Forfeiture Fund. So the state takes that fund and divides it up to the counties for, I think, computers or something for schools. So, it goes to the local schools. We

only keep a small portion, administrative fee to pay for our staff and then the expenses. But we are doing good work for the state by getting that money. And, of course, when we hit these people with penalties, they're also required to have proof of insurance. So, before they can resolve that matter, they've got to go out and get insurance.

And these are people who have been penalized before someone has been injured. So they have to pay this penalty, but they have not had an injured worker. So they've kind of been saved before they've had a catastrophic event occur.

We have six sworn law enforcement officers on staff and they're throughout the state, in the regional offices, and they're responsible for determining and investigating employee fraud. Maybe an injured worker is faking an injury or faking the extent of an injury, and they also are pursuing employers who continue to willfully fail to get insurance. [INDISCERNIBLE] that person didn't learn when they got the first penalty assessment, and then they still are trying to dodge insurance, so we're going to try to prosecute those people to the fullest extent of the law. But that's—depending upon the local prosecutors, the commission, the investigators can file the charges, but the local prosecutor determines whether or not they're going to move forward with the case, if they're going to dismiss it, or how they resolve it.

So, we don't have a say in how the case is ultimately resolved, but we do try to push to get the cases on our docket and maybe not do—be too lenient so that we can deter future bad acts from the employers.

This is _____ executive secretary's office. These some numbers that Meredith Henderson _____ executive secretary, and she wanted everyone to know all the work that her office does. They have—last year, it looks like they filed over 10,000 orders approving settlement agreements. She also does the third-party distributions. That's the personal injury cases component where if someone's been injured in a motor vehicle accident during work. So, she approves those. Their orders—the Form 24—here we go with forms. She—terminating benefits and also reinstating benefits. They also deal with medical motions, and other administrative-type motions, so all—her office handles anything that's not on a deputy commissioner's docket. So, it's the early stages of a case where they haven't gone to full-blown litigation. They're smaller issues.

Mr. Balance and Ms. Jones can't agree on which docket the plaintiff should go to, so they file it with the executive secretary's office, and she'll enter a ruling. And if they don't like it, they have the right to appeal that to the deputy commission level.

Duties of deputy commissioner. So, our deputy commissioners, they hold full evidentiary hearings. So it's kind of like a Superior Court judge, I

guess, if you're thinking about it. So, at the hearing, witnesses are presented by both sides. The plaintiff has the burden of establishing their case. The defendants—you know, they had the rebuttal witnesses, they have exhibits they want admitted, surveillance, other documentary issues. After the hearings are conducted, then the parties depose expert witnesses. We don't require the physicians to attend our hearings. We don't want to have the neurosurgeons from Duke hanging around for, like, five hours to testify for two minutes. So, those are deposed at the party's convenience.

All that evidence is submitted to the deputy commissioner, and he will review the testimony, and the exhibits, and the depositions, and he'll make a ruling. And that ruling is filed by written opinion award a few months with—after the case is closed. You want to talk anything about appearing in front of the deputy?

Jones: No, but I will say that post-hearing depositions are different at the Industrial Commission. Most cases, you have your depositions prior to the evidentiary hearing, but at the Industrial Commission, you gather your expert testimony after. You can file a motion to depose someone prior to the hearing, but I never knew how much medical information I would gain just, you know, handling the back claim. And now I know the difference between spondylolisthesis, and L4-5 and, the thoracic spine. And when I get in a deposition, and let's say I don't know something, I would say, you know, "Well, doctor, please inform me and, you know, give me your medical opinion regarding this type of condition because I don't know." I'm an attorney. I don't know the medical conditions that may be going on, or something that they may have spoken about at the deposition.

And so, you get a lot of information. You want to make sure you have the right medical experts. And causation is key to most of the cases that go on. So, before you get before a deputy commissioner, you want to make sure that you have read and fully understood your medical evidence.

Sprague: And I would recommend, since a lot of y'all are students, going and checking out a commission—a hearing at the commission, and going and checking out a hearing at the full commission, and going—I mean, Wake County Courthouse is right here—going and seeing a hearing—a motions hearing at the courthouse, a trial at the courthouse. Because one thing that you don't know as a law student, my—law student interns, and when I get new people working for me, I throw them in the deep end. So, I say, "Go do this. Go get experience." Logan got a [LAUGHTER]—interned with me. And I probably just gave him a lot of information that he had no business writing on, but he did a good job on it. [LAUGHTER]

But you need to see the difference between an Industrial Commission hearing and a jury trial. They are very different things, and you need to see the difference between a hearing and a deposition, a difference between a

hearing and a mediation. Because the skill set you use in a mediation is going to be entirely different than the skill set you use in a jury trial, or the skill set you're using in front of—in a bench trial, or the skill set you use in front of a commissioner. So, I would highly recommend going out there and doing that.

And if you want to know my take on the differences, since I've done a little bit of both. Industrial Commission hearings, in my mind, are a little more stale. They're not, like, salacious. You're not talking about—you're not trying to—

[OVERLAPPING—INDISCERNIBLE]

Sprague: Although, sometimes they can be, but in a—usually in a negligence trial, or a state or federal court trial, you're trying to make this person look bad. A lot of times, in the commission, you're trying to just show that there was an injury and that injury was caused by the—what happened at the—it's not like you're turning this person into an enemy, and their conduct was really, really bad. So, you need to go and see what the flavors of the different hearings are and get experience in that.

And one point I was going to kind of bring up a little bit later is that based on your own personality and what you like to do, you need to tailor what your skill set is and what you like to do with the area of law that you kind of go in and practice. So, if you like—you know, you like to write a lot, and you're real heady and smart, and you may want to do appeals. You may want to do things where you're appealing stuff to the full commission, or you're doing much appellate work. If you like people, and you're a people person, you may want to try and be in front of a jury, but they won't—when I went to law school, they didn't really tell us a lot about that. They just said, "Go out and get a job, and apply to everything and get a job, and do what you can." [LAUGHTER]

But as you progress in your career, you want your skill set to match what you're actually doing. And if you don't like what you're doing, you're not going to enjoy it as much, so my advice would be go get a little feel of all of that.

Balance: Commissioner Griffin, would it be all right—

Griffin: Yeah.

Balance: —this seems like a good time to maybe talk a little bit about—

Griffin: [INDISCERNIBLE]

Balance: —the pros and cons of practicing workers' comp law? Yeah, so—well, Drew kind of touched on it, so can you guys each add—because y'all each have different perspectives in terms of the types of practice you're in, and then, Commissioner Griffin, from being inside basically state government and the Industrial Commission the whole time—could each of you guys talk a little bit about the pros and the cons of doing workers' comp

work? From—let's start plaintiff's perspective. And also, I know, Drew, you also have a more general practice, right?

Sprague: Yeah. So, I—

Balance: Talk to the students about—

Sprague: The pros and cons of workers' compensation. In the way I look at my clients and what happens with me is—and this is something you kind of need to get a perspective on in general—is your client—a client is not going to walk in the door and say, "I have a workers' compensation claim. I would like to talk to you about that. I believe you need to file this Form 18 and let's get started." [LAUGHTER] They're going to come to you and they're going to sit down, and they're going to have a bunch of stuff they'd like to say. And—

Balance: And a bunch of stuff they're going to drop on—
[OVERLAPPING]

Sprague: Yeah, they're going to drop all this stuff on you. They're going to—about 95% of what they say is not going to be legally important to their case. However, I really subscribe to the concept of you're an attorney and counselor at law. I like that "and counselor" part, because you are a counselor. And you need to act sort of like a counselor and a therapist, and you need to sit there and listen to them, and take in what they're saying. But then it's up—ultimately up to you to decide whatever situation they just said, how can I put this into claims or a cause of action?

So, you need to—even if you're a civil attorney, you need to know what's going on in the workers' compensation department. Because let's say you're a civil attorney, you're a plaintiff's attorney, and somebody gets hit by a school bus. Okay, you think you need to sue the school—you need to sue the school. Well, that actually falls on—under the Workers' Compensation Act. So, you're not going to be doing that in civil court. You're going to be doing that in the Industrial Commission, and you need to know that.

And let's say you're a plaintiff's attorney and somebody comes, and they got hit by a pizza driver—delivery driver, okay? And you may want to—you may say, "Okay, I'm going to go do that in civil court." Well, it may actually be quicker for your client to go into the Industrial Commission and get their claim resolved through the Industrial Commission than it would to go through civil court, which, many times, can take longer.

So, as a new attorney and when you're experiencing client interactions, you need to know that there may be different places where workers' comp law, or other law falls into place, and that doesn't necessarily—you don't necessarily learn that in a law school classroom. And that goes in the pros and cons in that one of my pros for practicing in the Industrial Commission is that stuff happens quicker, in my mind, in the Industrial Commission. So, if you've got a choice of—if I had a choice of going to Superior Court, or

going to the Industrial Commission, a lot of times, I would choose the Industrial Commission, because it's kind of cut and dry whether it happened with an employee or not, in the course of their business. And if it did, I'd rather be in an Industrial Commission than in Superior Court, because it just—stuff happens quicker.

But at the same time, I don't—you know, when you're talking about, say, you had an egregious situation where somebody was drinking alcohol when there was an accident, or something like that. You're not going to get the civil penalties that you could get in a state courtroom and at the Industrial Commission. So, you—your kind of choice of venue on that is important to know.

So, as far as pros, I think efficiency is one of the biggest pros of the commission. And I also think that if you're injured and you got the documents and you can show it, a lot of times, you're going to get paid there as a plaintiff. However, you know, I've tried cases in civil court where I had, you know, documented injuries and medical bills, and they found that the person wasn't liable. So, it—you know, you—I think efficiency, proof is a little bit easier in the Industrial Commission.

Some of the drawbacks to it, to me, are—I don't know how to say this exactly, especially in front of the commissioner, but—

Griffin: _____ you'll be—

Sprague: And also, as a defense attorney who does some civil stuff, so she probably gets this at home, too. But it's a little bit drier at the commission. It's a little bit formulaic. It is those form papers. You're not making huge emotional appeals. If you like emotions and all that, it's not—you're not making the emotional appeals at the commission that you are in other courtrooms, so those would be my kind of pros and cons.

Balance: Erika?

Jones: And I would probably agree as far as to the emotional appeals. It is based in law, but I can tell you from the defense side, when I handled defense claims, I true—I enjoy the letter of law, so whether I am representing Goodyear or Food Lion, and I'm explaining to them, look, there was an injury by accident. You know, you need to pick this claim up. There was an occupational disease. Someone moved a bottle a hundred times a minute, and they tore their rotator cuff. They clearly have an occupational disease claim. They may not agree, and they still may deny that claim, so you're litigating, and they are emotionally involved. A lot of employers and adjusters are emotionally involved in the claims. They want that claim denied. They're getting surveillance. Surveillance is real.

M: Yeah. [LAUGHTER]

Jones: My, you know, friends and family ask all the time, “Do they really go out and get surveillance on people?”

F: [INDISCERNIBLE]

Jones: Yes, I will tell you, in 90% of my claims, there is probably surveillance on there, and I have, from the defense side, seen people—oh, they can't, you know, sit and stand for, you know, 15 minutes when they're talking to their doctor, but they've decided to go to the club and they stood at the bar for, you know, an hour-and-a-half waiting for a drink. [LAUGHTER] Or, they decided, you know, to hit the dance floor, and win the twerk contest. It is real, and it happens all the time.

M: I've seen those videos.

Jones: Yes.

M: And Facebook—people post stuff on Facebook, too, so social media. Be careful.

Jones: So, if I checked my—

M: Erika, I'm out there looking, and I know Erika probably is, too.

Jones: So, to the plaintiff side, I have added to my contracts that please be wary that on anything you post on social media is not private. Oh, my setting are—you know, your clients—"My settings are private." It doesn't matter. So, you're advising people across the board about things that they need to do.

I think a con, on the defense side, you do not normally get to pick and choose your clients. And so, if you're working at a firm and you're told to handle the—all the mom-and-pop shops, then those are your claims, and you may not like those clients, but that is your job, and you handle those zealously just like the clients that you do like. On the plaintiff side, if you work my nerves to the extent that we are just not a good fit, I can file a motion to withdraw. So, there—I'm sure there are ways to pass things down on the defense side, but you're trying to bring files in and handle things, and you know, make sure that you're meeting your billable hours, so you have pros and cons on both sides.

I always said, you know, "If I could do plaintiffs work and I don't have to bill these 2,000 hours a year, my life is going to be so much easier." Not at all. I have clients texting me at, you know, 10 o'clock on a Sunday morning, when I'm sitting in church, and they're like, you know, "Well, I have a doctor's appointment tomorrow." "Okay, well, go." [LAUGHTER] Like, you don't need my legal counsel to explain that. So, however—having relationships, if you're the type of person that you like talking to people, you know that you're more of a counselor at law, plaintiff side may be better for you. But I've had very good relationships with adjusters where they come in town, we go out for drinks. We go to the club. We hang out. And so, it works well on both sides, so don't think, well—I always said, you know, "I could never, you know, defend insurance companies." Well, the law is what it is, and if there was not an injury by accident, if there was not an

occupational disease, if there is not a claim, a specific traumatic incident, then that claim should be denied. You know, I wish you well in life, but you don't deserve any money from the insurance company.

And so, you can do that and defend a claim. And I also can explain that to a client that comes in the office. "You know what? I can't help you out on the workers' comp side. Let's see if you have Aflac. Let's see if you have some type of benefit that we can tap into. I may need to refer you to a Social Security attorney." So, you can definitely look at claims from both sides.

I have been in hearings—I'm kind of a laid back—you know, I'm not going to get too hot and heavy about something, but I will definitely—I've been involved in claims where, you know, those hairs on the back of your neck—and I'm, you know, getting ready to come out my seat, but it's probably not the salacious—the situation where you're trying to sell something to a jury. The deputy commissioner is listening for the law, and listening for the facts, but you definitely need to make sure that you are putting forth evidence to support that. And there is definitely a delivery and a way to do that, so make sure that you are able and equipped.

Some people do not enjoy practicing in front of a courtroom. They are definitely more writer—you know, would rather write a brief and handle appellate cases. But I'm sure your professors have told you—I am an adjunct professor at Central—I tell my students all the time, "Your case is probably decided from the time you sent that motion in, from the time you sent your brief in, before you get in front of Commissioner Griffin." They looked at your case, and when you come in, yes, there may be something else you say, but if you've sent a brief in that is riddled with mistakes, and has issues across the board—and I know I'm off topic and I'm sorry.

Balance: No, you're good.

Jones: Definitely make sure that—your writing professors that are telling you to get it right, we're teaching Bluebook right now to 1Ls and they hate me. [LAUGHTER] However, they under—they will understand one day the reason why it's important.

Balance: Yeah, and the—both Drew and Erika mentioned something, and I think it's really important. When Drew and I—when we were talking yesterday about this, he said something to me that I thought was really important, and that's the idea of just being aware of your personality. Because in doing workers' comp, you know, you can be on the plaintiff side, and you can really make a true difference in somebody's life. I mean, you know, you think about it.

These people, when they come in your office, if their claim has been denied, you know, most of these folks are just good salt-of-the-earth people. You know, they don't have big savings accounts. They live paycheck to

paycheck. They don't have 401(k)s and other kinds of things. But they've worked hard all their life, they've done great things, and they've raised families. And then they have an injury, and suddenly, they got no income. Their family and their friends may desert them. They don't have those friends that are there from their workplace anymore. And so, you can come in and you can do one of the best things ever for those people, at probably one of the worst times in their lives.

And so, you know, I think that one of the pros of doing workers' comp work is that you can really help real people who really need it, you know. And it is more determined by really what the law and the facts are necessarily, than whether you go in and make a beautiful argument to the jury or the—your other opposing counsel does. So, I think that's a real pro and I think you really need to—Drew was mentioning this—that you really need to think about your personality when—if you're going into, frankly, any type of litigation field, whether it's personal injury, or workers' comp, or something like that, because it really matters.

And then, conversely, you've got to realize that sometimes, if you're doing defense work, you may end up in one of those situations that's really terrible. I had a case a number of years ago, and I—my students—I think I told about this story—where I had a guy who—he had an uncontrolled seizure disorder, and he wasn't taking his medications. And he didn't tell the employer when he got the job that he wasn't supposed to be climbing in things or driving vehicles. He'd been at work about six weeks, 26-year-old guy, had a fiancé and a young child—was at work and had a seizure, and fell out of a truck, and landed on his head, and broke his neck, and became a quadriplegic. And I had to defend that claim, and you know, as sorry as I felt for that poor young man, and for his fiancé, and his parents, and his child, I had to be able to separate that, and to say, "While I can still for sorry for them, and feel that this is terrible, I can also, at the same time, say, 'This is not my client's responsibility.'"

And so, if you're going to do defense work, I think you've—kind of sometimes, you've got to be able to do that, and you've got to be able to put some of that emotion aside, and say, "I've got a job to do. The law says this. I'm going to do my best to represent my client and help them out in that case, and deal with it." So, I do think it's really important.

And I would say whatever area of practice of law you go into, by the way, I think it's really important for you to think about yourself, what kind of person you are. Don't just take a job because it's there and it pays the bills. I know you guys have student debts and other kinds of things, you know, to—loans to pay. But you know, you don't want to find yourself 5 or 10 or 20 years into practice, and looking back and be like, "Man, I wish I'd

have done this.” So, Drew, what do you—you got any other thoughts on that?

Sprague: Yeah. I mean, I would certainly agree with all that you’re saying, but it’s more than just plaintiff and defendant. I mean, it’s—if you work at an insurance defense firm, that is a different—you have to view the world differently than if you look—work for a plaintiff’s firm. I mean, you just flat do. And I have seen friends of mine get into situations, get into jobs, they take the job, and they just get burned out, and they end up doing something else, or they don’t believe in what they’re doing, you know? Or if you are a bleeding-heart liberal, you do not need to go necessarily in the DA’s office and start prosecuting people. [LAUGHTER] And like, conversely, like, if you’re a big business person, and you believe that there are way too many torts out there, and you know, business is getting hampered left and right by all this, you don’t need to be in a plaintiff’s firm.

And I don’t think law school does a great job explaining that to everyone, and sort of taking that analysis in and applying it to your job, because sort of, if you look at our career paths, I mean, Commissioner Griffin, she started at the Industrial Commission and is still there. And so, a lot of times, that first job, or that second job you take ends up being—that’s your career path, and you don’t think of it at the time, but it just happens.

So, I would just try to be a little thoughtful about that when you’re making some of these career decisions.

Balance: And that’s a good segue. Do—pros and cons about working—

Griffin: [INDISCERNIBLE]

Balance: —for the commission or working in state government?

Griffin: How am I going to convince students to practice workers’ comp when y’all said it was dry? [LAUGHTER] No, no— [OVERLAPPING]

Sprague: Oh, I’ve got some good stories that aren’t dry.

Griffin: Yeah, you don’t get to do the opening and closing arguments. It’s like a bench trial. You just got the judge up there, and if—sometimes the attorney is like, “Your Honor, can we say?” And I’m like, yeah, whatever, and then you’re like, “Oh, gosh, what are they going to talk about?” But despite that, workers’ comp translates to other areas—personal injury, Social Security, disability. There are other fields that you can use. I mean, it’s a great place to build your litigation skills before you appear in front of the jury of 12. It’s a learning ground that you can have, but there are lots of pros I see.

I’ve—for the most part, the same attorneys that have been appearing since I started are still practicing comp. So, you get to know your attorneys,

you get to know what to expect, you get to know who to set first, who to set last, who's long-winded. You know when somebody is—

Balance: She looked at me. Did you—[OVERLAPPING]
[LAUGHTER]

Griffin: You can recognize when somebody is getting—going to get upset. You know the tics. You know when they get frustrated. So, being prepared is the biggest issue that I see from my standpoint, is that [INDISCERNIBLE] plaintiff side, is that you've talked to your client, and you've prepared them with the question. And they'll get up there, and you ask your client a question, and they give an answer you weren't expecting, and you don't know what—how to follow up. Or the client is extremely nervous and doesn't know what to do, and they're combative, and you haven't prepared your client for the process.

It's informal. It's not as, I guess, as strict as a Superior Court trial, but we still follow, you know, proper decorum. We still have to be officers of the court, so it's very similar, but not as strict. We do—you know, we take oaths, and we don't have a bailiff in there, so sometimes, when you don't—people don't see a bailiff in the courtroom, and they're like, "Okay." They don't think of it as real court, but we can always—we have them on standby. We can call them, and we try to make sure that people understand, this is a real court.

That—and for these people, it's the first time they might be being in a courtroom situation. We want it to be professional, and for them feeling like they're having their case heard by someone that's professional and can rule on it. So, we try to rope in our lawyers, and make sure that everyone is behaving accordingly. So, being prepared from both sides, making sure, you know, you don't ask the same question a thousand times, because I take notes during hearings. I type, as I can't write very well. I can type almost word for word, whether—the question and answer at the same time. And it's like, "They've asked this question five times. I know the answer. Why do they keep asking?" And then, like, I want to say, "I'm going to sustain an objection that you didn't make because I've heard that over again."
[LAUGHTER]

So, you know, just learn the styles. You get to learn personalities. And workers' comp is a unique group and it's a certain set of people, so you work—you know the lawyers you're appearing against. You're working against the same people, so that relationship is great for future cases, because you can resolve things. I think that's the—it's a nice niche. Sometimes going out in the big old world, you know, you might get a firm from Asheville coming in to defend this employer. With this, you're going to probably have the same firms, and the same plaintiffs' attorneys that you're

going to be dealing with, so you—established relationships, I think, are great for resolving cases, and getting things trimmed down.

Working for the state, I didn't know anything about the Industrial Commission. I got there, I had a wonderful commissioner I worked for. It was a great experience. She mentored me. I had a female commissioner, which was awesome. The commission was very diverse when I got there. I think it probably had four females, and three males, which was the first time—I think the only agency across the state that had that many women in the positions. So it was a great learning ground. People were willing to give me independence and mentor me, and I was able just to increase my skills.

And there are a lot of places at the commission that, as an attorney, we have—oh, I for—I can't even tell you the number of attorneys we have, but it's so many positions that I didn't just have to just stay as a clerk. I can move to the administrative side, the executive secretary's office, on to prosecuting as legal counsel, and the deputy hearing—commissioner level. So, there was opportunity and growth at the commission, which I liked. You don't get that at all agencies, especially for lawyers. You know, you're limited. Sometimes, agencies only have, like, maybe one or two positions, so there's nowhere to go. But with the commission, there's plenty, and there's other places—like I said, I left and went to the Attorney General's Office, so there was other opportunities across state.

So that's—most of the time, I guess we kind of had more of a sort of 9:00 to 5:00 lifestyle, but it just depends on the workload, and what's coming, and the different things you do. But it's not as stressful as billing hours, or having clients' text you at all times, although attorneys sometimes do call and text, email about cases that are, you know, in front of them. So I—from my side, I've enjoyed working for the state. I think it's an honor to serve the citizens. You do have to be impartial. So, I have to also learn to check feelings. You know, I'm—people are on the stand, they've lost their homes, or they've lost someone because of their financial situation, or they've been injured, and they're in pain all the time.

I have to be impartial. I can't show emotion, because then the defense attorney is going to think, "Well, she's not fair. She's _____," or the employer is upset because they feel like they're being mistreated, and that they—this guy has ruined their business, and they're losing money. So, I have to look at everything and treat everybody neutral, and just listen to all the facts and make decisions. So, my job is to listen to everybody, and sometimes, it's just—it's he-said-she-said, and who is going to be the winner. And it's a toss-up, and you just have to learn your gut feelings, and you know, assess credibility on your own, so it's—

I've grown. I think when I first started, I was very nervous. Now, I have a better ideal. I can kind of tell pretty much halfway through testimony

whether somebody is being honest. I can look at their body language, you know, they're crying every time their attorney asks them questions, and they just can't boohoo, and the other attorney comes across. "I don't know. [LAUGHTER] _____ I don't recall." Their demeanor changes, the way they—they're no longer crying, or they refuse to look at the attorney.

I had one lady, she was just all upset. Then, when the other attorney was cross-examining her, she just wouldn't look. She just, like, look at me. So things like that, you just get to learn about people's body language and skill. So that's a good asset that you can translate to any kind of practice. So, I think there are pros and cons in being in any field. There—but we all work together, which is a good thing. And being in a state agency, I'm able to see what life is like as a defense attorney and a plaintiff's attorney, and I can kind of gauge, "Well, do I want to do that? Want to do that?" I know what to do. I know who to contact.

Balance: Yeah, and since this whole symposium is about administrative law, I do think, for me, practicing before the Industrial Commission is really interesting. I actually—I really like it, because, for me, you know, you've heard that it's a little more dry, but I think from a lawyer's standpoint, I think in a lot of ways, it's more satisfying. Because you do have—your cases are decided by an administrative law judge. They're not decided by a jury of 12 random people who couldn't manage to get out of jury duty. [LAUGHTER]

You know, and so they are heard by knowledgeable people, who, like Commissioner Griffin, have been—most of them have been doing it for a long time. Good lawyers, practitioners, they really know the law. And so, the cases, in my opinion, are much more decided on actually the facts and the law, and a lot less sort of on that kind of emotion. So, for me as an attorney, I feel—it's a very satisfying area of practice, I mean, because when I win, I feel like I've won because I presented the law and the facts better. And when I lose, which isn't a lot, [LAUGHTER] but it happens, you know. It happens, especially if you're on the defense side—it happens. I still feel that I have gotten a fair hearing. You know, I feel like I've had the opportunity to put on my case, that an educated administrative law judge has made a decision in the case, or it's gone to the full commission, which again, is the same thing.

And for me, that's a very satisfying thing, because I remember when I first started out practicing, I was doing a lot of jury work, when I was on the plaintiff side, and for me, that was always—just kind of seemed like a roll of the dice. And it was very unsatisfying sometimes when you would poll the jury and find out why they made the decisions they made. And you'd be like, 'That was the most important piece of evidence, and nobody even

mentioned that,” you know? And so, I think it’s a very satisfying area of law.

I think it also is a lot more determined on the law and the facts, and not necessarily procedural technicalities. Like I often tell my students that—excuse me, Commissioner Griffin—but it’s like—in workers’ comp, we have the rules of evidence, but sometimes not really. And it’s like we have the rules of civil procedure, but not really. But in a good way, because it’s designed so that the truth comes out, and so that it’s not—you know, evidence isn’t kept in or out based on some little procedural technicality. And I think as—again, as an attorney, I think that’s a very satisfying thing that when you get a decision, it’s because of the law and the facts, and not because of, you know, some technicality. You didn’t make just the right objection at just the right time, or something like that. So I think it’s something to think about.

Moving on a little bit, I know, Commissioner Griffin, you already touched on this a little bit. I’d like to ask the panel members, since—again, since most of the folks in here are students, what kind of—I’d like for you guys to maybe try to give the students—give them some advice about how to be a good lawyer, about things you see that lawyers do well practicing before the commission or just generally. And then things that you see them do poorly. And it might even be interesting if you guys gave the opposite perspective, like, where—like, Erika, like, what kinds of things as a defense attorney did you see plaintiff lawyers do poorly that they could have done better?

Jones: Probably not preparing their client for what the real outcome of their case would be. I can speak on that from a defense attorney side, and a mediator side. When you walk into a case and the plaintiff thinks that they are going, you know, to win pain and suffering, or they’re going to be compensated for things that are not allowed under the act, the failure of preparation; the failure to prepare your client.

To come to a hearing, and to see a plaintiff’s counsel ask the question and say, “Well, can you deem the compensability,” and the client—that question went right over their client’s head. They have no idea what their attorney asked them, and maybe they did prep with their client. Maybe they didn’t. But clearly, through discovery and anything else speaking with your client, you should know whether your client understands a question on an eighth-grade level, or whether they have some type of college education and they should be able to follow along better.

I’m sure Commissioner Griffin will agree, there is nothing worse than being at a hearing, and it taking 10 questions to ask someone, “How did you get hurt,” because they don’t understand the question their attorney is asking them. I have seen that, and I am—I would never be a poker player, because

I had to, like, put my head on the table, like, “Please, Jesus, deliver me from this situation.” [LAUGHTER] So, not being prepared. I have seen—and I can say I’ve seen it on both sides. Probably as a clerk sitting in full commission, watching attorneys read their brief.

Balance: That’s terrible.

Jones: As one of the moderators said earlier, everyone in here can read, so to come to full commission, which is your chance—they have already read your brief. I promise you, all the commissioners are prepared—fully prepared and have read your brief. It is not the time for you to sit in there and read your brief. So, to not prepare to zealously advocate for your client is borderline malpractice, if you ask me.

But at the end of the day, making sure you know your audience, making sure that you know which deputies kind of tend to side one way or another, whether you know which commissioners—kind of which way they side and what evidence you need to bring out of your case to explain to them why they should decide one way or another.

The law is black and white. It’s really the facts and how they turn. I can take a case for a repetitive movement, or I can take a case whether it’s a back condition, and any little fact that I can kind of explain or twist will help my client in one way or another, or will harm them in one way or another. And so, you definitely want to make sure going into a case, you understand. I can tell you as a defense attorney, when I practice, I thought that I understood the job. They worked at a plant, I just—you know, in my mind, I had a picture of an assembly line, and I just knew that this person did not get carpal tunnel from working on this assembly line, and that was the end of the discussion. And when I got to the hearing, and even with the employer explaining to me and with, you know, photographs, I should have taken the time to go out to the plant, but I wasn’t given permission. I wasn’t paid by the adjuster to go do it, so I couldn’t go do it.

And so, from the pictures and the explanation, I thought, you know, we had this lock, key, sealed, everything was done. And when the plaintiff got on the stand and explained her job, again, I’ve lost because of the detail, the facts that came out. So being prepared on either side is definitely key.

Balance: Absolutely. Drew, your thoughts?

Sprague: In the last year, I read this book called *Insight*, which is about self-awareness, and it has nothing to do with the law, but it’s the best book I’ve read in the last couple years. And I think both sides—you need to be as self-aware as you can in your professional life. And sometimes, I see defense attorneys, and plaintiff—I mean, it’s not—attorneys in general are not self-aware. And as a defense attorney, I can’t tell you how valuable it is—sort of what Mike was saying earlier—is to acknowledge the other person as a human being, and say, “We’re sorry that this injury occurred to you,” and

little things like that can help your practice so much more than just coming in and being a jerk, and saying, “We’re not paying this claim. We’re not doing this. You didn’t—you weren’t injured on the job. This isn’t compensable.” Like, little human elements like that can help your practice more than anything.

So I had a trial against a defense attorney, and this guy kicked my butt. And the reason he kicked my butt is he took little things that were important to me and turned them on his side. So, one of the best things you can do is—and in order to even see that is you’ve got to see the other side. You can’t be so blind on your case that you don’t see what the other—the good points of the other side is. So, you’ve got to be aware of that. And this guy just took little things that I did and turned it towards him. And he took positives of my case, and it turned in our direction—in his direction.

And I mean, I think that is one of the best things you can do as a lawyer, in general, is to take whatever the other side is saying and figure out how to turn it your way. And that seems like a simple concept, but many people don’t pick up on that. And I think the little—I can remember even, I was getting some stuff out in testimony, and you know, I had a guy—he was convicted of some crimes, and I said—and I wanted to put on that he had been convicted of a couple crimes because we had already had a pre-trial motion. I knew it was coming out, and I said, you know, “Can you tell us a little bit about your crimes?”

And then, the defense attorney, when he was talking about it, instead of just making the guy look like a jerk, he said, “Well, now that you’ve already brought up his crimes,” they made it look like I was the one that brought it up. And I was like, “Oh.” I wasn’t trying to look like I was the one that brought it up, but he just used that against me. And in order to fully see your case, you’ve got to see the other side. You’ve got to be a human being to the other person. I think a lot of defense attorneys that I see, as one of their weaknesses is, they don’t use the people skills. And whatever side you’re on, you’ve got to use your people skills, and that’s going to get you further than just being a total, you know, “I’m going to blow through this. I’m going to deny this claim.”

Because, like Erika said a little bit, sometimes in mediations and all that, people just want to be heard. They want to get their story out. They want to say what happened to them. And by you using a little of the human element, you’re going to get yourself a lot further than just barreling in with your position.

Balance: Yeah. I’ve got a little story that piggybacks on that. So, back when I was doing plaintiff’s work, when I first came out, I represented this lady who had a very, very hard job, and she was bringing a psychiatric injury claim. This was back when those claims were still kind of viable before

some cases were issued. And my—the opponents and the opposing attorney was Dawn Dillon Raynor. I'm sure y'all know Dawn Raynor.

She later became a law partner of mine at Young, Moore & Henderson's. That just gives you some sense of the relationship that she and I had, and the respect I had for her.

But she had sent my client discovery, and had asked, you know, "Have you ever had any traumatic things happen to you in your life?" And so, my client and I sat down, and I asked my client, "Have you had traumatic things happen to you?" And she said, "No, no, no, no, no." So, I sent that back in discovery and believed my client, and maybe I didn't frame it the right way or whatever, but she said, "No, I didn't have anything." So, I had her on the stand. We did the direct testimony. She told her story. It was very compelling. I mean, her work was really, really hard that she did. It was very stressful, and she had genuine psychiatric problems.

And then Dawn got the opportunity to cross-examine. And she got up and she didn't get one sentence into it, and I knew I was dead, because rather than—you know, she had a choice, like Drew was talking about. She could have come out and said, "Now, isn't it true, Ms. so-and-so, that you lied in your discovery? Da da da," like that. She could have approached it that way. But instead, she said, "Hi, Ms. so-and-so. Remember me from the mediation? It's so good to see you again." And my client, said, "Yes, Ms. Raynor, I do remember seeing you. It's good to see you again." And I thought to myself, "Uh-oh. I'm in trouble."

And then the next thing that she did is she said, "Now, I know you've been through a lot, and I hope you understand, I'm going to have to ask you some difficult questions. And I want you to know, it's not personal, but I'm just—it's question I have to ask because of the law and the facts here. And I just want to apologize up front, because I know some of it's going to be sensitive, and I hope you understand." And my client goes, "Oh, yes, honey. I understand. It's okay." And then for like the next hour-and-a-half, Dawn got—I mean, it was like an Oprah Winfrey session [LAUGHTER] combined with Dr. Phil, and everybody else. And it turned out that my client had all kinds of horrible things happen in her life.

She had been an abused child. Her father had left her. She had had a child pass away. She had been abused as a spouse, and I was—and as an attorney, I couldn't object. Those were all legitimate and valid questions.

F: It was—[LAUGHTER]

Balance: But—and—but Dawn had done exactly what Erika and Drew said, which is first off, she was prepared. She had done her homework. She had talked with this lady's co-workers who knew all the stories, who had sat and heard all the stories. And then she acted like a human being in the way that she cross-examined, and it was brilliant. And my client lost her case,

and I lost the case. But I learned from it, and I think this advice that they're giving you guys is—it really works and it's really _____.

From a bench perspective, Commissioner Griffin, what kinds of things do you see lawyers do well and do poorly, and what kind of advice would you give?

Griffin: _____ the Industrial Commission only has the deputy commissioner level, where you do your evidentiary hearings, you can also practice your appellate work to do the oral arguments, so see how exciting it is? You can do your trial, and then you can come before the commissioners and do your oral argument. So, as Erika stated, you know, some attorneys do—we—they submit briefs, we read the entire record, the file before our hearings. So we look at all the depositions, we look at the deputy commissioner's opinion, all the exhibits for reading—lots of things. We have these briefs that they've submitted, 35 pages limit. We had to limit because people like Michael Balance were sending 50-page, 100-page—
[OVERLAPPING]

Balance: Guilty. [LAUGHTER]

Griffin: So, an attorney gets up and it's an opportunity—because sometimes we have an idea after reading it. “Well, I'm thinking this is a lien reverse, or a lien affirm.” But the attorneys can get up there and they can sway—persuade you to go a completely different direction. You're like, “I didn't even think about that,” and—because we sit in panels of three, so we discuss it after the fact, and some—a lot of times, we've been persuaded by the oral argument presented by the attorney. But the attorney gets up there and just reads the brief word for word, monotone, open a fact-finding body, you know, we are just—we kind of zone out, and we're like, “Well, I'm just going to stick to what I thought.” You don't even give the guy or person any benefit of the doubt, because you're like, “Well, they're not zealous about this. They don't have an interest. They just seem like they're dead in the water, so this must be a loser case for them. They're just here because they had to appear because their client wanted them to appeal.”

So, when you go off script and you talk and you point out, you know, “Defendants in their brief, they raised these issues, and I want to tell you why the facts don't support that.” Then, we get engaged and then we start asking questions. And when you have the back and forth, I think that's—it's better for you, too, as an attorney, I think, when the commissioners ask questions and you're able to respond, like, “Oh, yeah, this is what—this is the law on that, and this is the facts, and turn to exhibit page so-and-so. You'll see where my client said this.” That's very helpful.

So I think being prepared, knowing your case, being able—if you do receive a question from the commissioner, being able to respond. Make sure you've read your opponent's brief, and you've looked through the cases,

because sometimes we'll say, "Well, Mr. Balance cited, you know, state v. so-and-so, and what are your thoughts? How is this case different from the facts in this case?" And you're like, "Oh, well, I don't know. Can I get back to you later?" [LAUGHTER] It's kind of like, you know, "We're interested in it now," so if you can come back, response, then that may be something that persuade us.

So, just—it's being prepared. I know we say it all the time, but I mean, it's important for trials and for oral arguments, because after that oral argument, that's it. That's done. You don't get to submit anything else. We're going to issue our decision and then our cases—we can move to the next slide, because I'm talking about full commission.

Balance: Yeah, yeah.

Griffin: Which is what we're doing. We're the ultimate fact-finding body, so it's your opportunity, if the deputy found your client wasn't credible, you can point out in the record, in the transcript, why your client should be credible, and we can make that decision, and, you know, reverse what the deputy has found. So, it's important for you to know, be prepared with the issues, and have all—point in the record. And it's really helpful when the attorneys say, you know, "Please turn to Exhibit Page 355, line 123 of the transcript." It's like we're writing that down and then we go, and we look at that, and we have our clerks sometimes research those things when attorneys bring them up in oral arguments.

So, it's important to be prepared, not only your case—know your case upside and down, but also what the opponent's argument so you can counter all those positions. And then on rebuttal, it's good for the attorney, when you've heard the—if you're the appealing party, you've heard what they had to say, you get back and you hit those points. "Oh, no, he's incorrect, because, look, turn to this. I've got it here. The law says this. This is why he's wrong."

So, you know, not just sticking by your brief, because you know, you get comfortable with your brief. You get comfortable just with what you have written in front of you. And not being afraid because it—we are informal. We're not there to, like, growl and scowl. It's not like being on the Supreme Court where, you know, you got the, you know, RBG and them are up there [INDISCERNIBLE]. It's just us, you know, and we're talking and we're listening, and you know, we can be persuaded, and we like to hear the information. The attorneys really do turn the cases _____.

Balance: Do you prefer attorneys who use all of their time in oral argument, or those who make it quickly?

Griffin: Sometimes you need all of you—you need all of your time. Some people don't because they're just like regurgitating and saying the same thing over, just spinning wheels. Know when you've said enough.

And you can tell by the questions you're getting sometimes like, "Oh, well, this is—I'm done. They're not falling for it." If you just let it go sometimes, and you listen to what's being asked, and if you were going to harp on one issue, but the commissioners are asking you about something totally separate, abandon that other issue because we've made our mind up, and try to convince on the issues you're being questioned on.

So, it's being comfortable, being able to be free-flowing, go with the flow, and not just stick to the script. So, that's the biggest thing. Being comfortable with the cases, and I think that's—the best attorneys we have are the attorneys who get there and talk to us, and just kind of lay it out without looking at—you know, going through the brief, because a brief is a brief. We've already read it, and it says what it says, and we got it. So, we want to hear your other thoughts on it.

Balance: And it really is—I mean, it's fascinating because when—you know, when you're a student—and I kind of still a little bit remember of what it was like to be a student, although I know it was a long time ago. The skills you learn here, you really will use. It's funny because the—so, we just hired one of my former students, and she's a new associate in the firm, and we recently went to a hearing. And I don't have as many hearings anymore, because most cases settle in mediation. So, we went to a hearing, and afterwards, it was—it was kind of funny, because she goes, "Wow, that was like kind of just like trial ad." And I was like, "Yeah." [LAUGHTER]

And then, for the full commission, it's really just a lot like moot court, or a lot like legal research, and writing, and advocacy, your appellate law class, where you learn the arguments.

Griffin: And—let me interrupt you.

Balance: Yeah.

Griffin: The writing. That is probably—my clerk will probably agree. The briefs that the parties submit, it's so important to take time to file good briefs, and to cite to the record when you're making an argument. Because as I said, we have depositions, we have exhibits. We might have 2,000 pages of a record before us, and you say, "Yeah, my client testified that he was great, and he filed an incident report on this date," but you don't cite that. So, we have this 2,000 pages, and we've got to try to go through it and find it. And we do look for it. I mean, unfortunately, the clerks kind of get—we're like, "Hey, can you find this?" So, they spend hours. But we have several cases that we're preparing for, and that—we might miss it.

So, if you really do—want to do justice for your client—and we require as part of our rules that you cite to those _____ but some attorneys do not for various reason. I don't know why not. But it's important, so writing skills—I know you don't—it's very important. If you write a really good brief, that also turns your case. If the brief is well-written, and we're like,

“This is—I was thinking the other way, but gosh, this brief, he really made some good points, and he cited to the record. Like, I pulled those pages, and he’s correct. I think we should look at that.” So, your brief writing is important, and your presentation, and being prepared. All that. So everything you learn in law school, it is important. You’re going to use it, you know.

You think about when you’re growing up, all the things you learned, like why’d I have to learn this? But it all comes into play. And, I mean, of course, the better you do those things, when you get to the Court of Appeals—you know, if you’ve done a great job in front of the commission and you have to appeal to the Court of Appeals, the next step, you’re going to be able to take the brief that you had—information—and use that, and not have to start from scratch, and it’s better. And you’re going to be more comfortable with the case. You’re really going to be able to stand in front of the three-judge panels and argue your case efficiently.

Balance: And if I could kind of—I know we’re almost done here. If I could kind of tie in together a couple of those things, and what Drew said earlier with what Commissioner Griffin said? And that is, you know, as a lawyer—and I know my students have heard this one before, right—think forward, reason backward, okay? Think forward about the outcome you want to achieve, and then reason backward, put yourself in the other person’s shoes, reason backwards, and prepare your case that way.

But also, think about your audience, okay? The folks at the commission are really, really good people, and they work really, really hard. And frankly, they’re overworked, and frankly, probably underpaid, too. And they have families, and they have lives, and they have kids, and they have other responsibilities, so think about that. You know, and in any area of practice you go into, by the way, think about that. And if you’re going to write a brief, make it easy for them, right? I mean, don’t make them go searching through 2,000 pages of evidence. You know, if the facts are on a certain page, take the extra 20 seconds, put in the cite, and get it there for them, because I can—at least, I’m going to assume—I’ve not been at the commission, but I’m going to assume that the easier you make it for the people who are judging your case, the better chance you’ve got of winning. Would that be—[OVERLAPPING]

Griffin: And we do have a lot of people that are unrepresented.

Balance: Sure.

Griffin: So, of course, unrepresented parties, they’re not going to do all of that, and we do take the time and go through—and our deputies—first of all, we have the deputy commissioners, that they’ve already done most of the legwork for us, the heavy lift. So, we do—we don’t just abandon your case because you haven’t done a good brief. It’s just we’re thinking, “I should

get paid the attorney's fees on this matter because I'm doing all the work on this case."

M: Yeah.

Griffin: But we look at everybody's case fairly. It's just easier if you're more prepared, and the defense attorney, if they presented a better brief, or the plaintiff's party presented better, we're—it's easier to go with the person that's better, but we do consider everything in front of us.

And unrepresented parties are totally different, and we understand they're not going to be able to present their case the way a represented person is. So, we spend a lot—we spend more time, and we don't mind spending time on that, because we know this person doesn't know. But then also, the record is usually not as large and voluminous with an unrepresented person, so.

Balance: I think we're about out of time. Anybody got any questions or any other thoughts? And last—

Griffin: Last line. So, as he mentioned, we're down the street. The Raleigh office is on Salisbury Street, which is only, like, a few blocks away. Our hearings—our deputy commission hearings are held in the Industrial Commission and some at the state bar. And our full commission arguments are always at the full commission. Our calendar is on the website. It's open to the public. We are more than—and would like to invite you all to attend, and I think we probably will come to the law school. I think, like, we usually do a rotation through the law schools, like one—full commission will do a hearing, but it is fun. It's open to the public. You can come in and out. You don't have to worry about anything. You can get an eye for it, and you can see the docket, what's available, and you can check it out, and you can bring your class. If you want to set something up, we would love to have it.

Balance: Yeah.

Griffin: So we'd love to have you, because we want to get more people involved and interested in workers' comp, because it's an important area, so—and we thank you for allowing us to present to you today.

Balance: Okay, thank you guys.

[END RECORDING]